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ONTARIO LABOUR RELATIONS BOARD REPORTS

September/October 1996



Ontario

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ONTARIO LABOUR RELATIONS BOARD REPORTS

A Bimonthly Series of Decisions from the
Ontario Labour Relations Board

Cited [1996] OLRB REP. SEPTEMBER/OCTOBER

EDITOR: RON LEBI

Selected decisions of particular reference value are
also reported in *Canadian Labour Relations Boards
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LYNDHURST HOSPITAL; RE PAULINE AU AND THE ONTARIO LABOUR RELATIONS BOARD.....

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First Contract Arbitration - Practice and Procedure - Termination - Union's first contract application pending before Board - Employees subsequently filing termination application - Union's response to termination application including allegations of employer initiation or interference in connection with application - Union seeking dismissal of application under section 63(16) of the Act - Board determining that representation vote ought not to be held at this stage and that first contract application and termination application be listed together for hearing

EAST SIDE MARIO'S, BIRSSA HOLDINGS INC. C.O.B. AS; RE LYNDY ANN FALVO; RE UFCW, LOCAL 175/633.....

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Health and Safety - Discharge - Evidence - Judicial Review - Practice and Procedure - Applicant alleging violation of Occupational Health and Safety Act on basis of discharge described as reprisal for complaint of sexual harassment in workplace - Board declining to dismiss application without a hearing for want of *prima facie* case - Employer's application for judicial review dismissed as premature by Divisional Court

LYNDHURST HOSPITAL; RE PAULINE AU AND THE ONTARIO LABOUR RELATIONS BOARD.....

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Interference in Trade Unions - Construction Industry - Remedies - Termination - Unfair Labour Practice - Prior to directing representation vote, Board inquiring into union's allegation that employer initiated termination application within meaning of section 63(16) of the Act - Board finding involvement of employer in early stage of process leading to termination application - Board holding that termination application founded in employer's initiation should result in its dismissal absent compelling labour relations reasons why vote should still be held - Termination

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BYTOWN ELECTRICAL SERVICES LTD.; RE SHAWN JOSEPH ARSENAULT; RE IBEW AND THE IBEW CONSTRUCTION COUNCIL OF ONTARIO, LOCALS 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, 894, 1687 AND 1739.....

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Interim Relief - Construction Industry - Remedies - Unfair Labour Practice - Applicants alleging that International union, through trusteeship has made unlawful use of local union's assets, has improperly imposed dues increase on members and has conducted itself improperly in negotiating new collective agreements to detriment of members of local union - Applicants seeking interim order staying implementation of new collective agreements - Board concluding that it is without jurisdiction under section 98 of the Act to grant the interim order sought, but that Statutory Powers Procedure Act confers jurisdiction on Board to provide substantive interim relief, including the order sought - Board dismissing application for interim relief because of applicants' undue delay

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, KEN WOODS, ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL UNION 1788 BY ITS TRUSTEE, IBEW AND ONTARIO HYDRO AND EPSCA; RE POWER WORKERS' UNION - CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT, AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF IBEW, LOCAL UNION 1788

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Intimidation and Coercion - Certification - Change in Working Conditions Evidence - Construction Industry - Evidence - Practice and Procedure - Representation Vote - Unfair Labour Practice - Witness - After conducting inquiry into witness's alleged prior inconsistent statement, Board declining to declare witness hostile or adverse - Board concluding that union used charges and threat of charges under its constitution to intimidate employees into supporting certification application - Certification application dismissed under section 11(2) of the Act - Board finding that employer violated statutory freeze when it changed wage rate it had agreed to pay to two employees - Compensation ordered

CENTRO MECHANICAL INC.; RE UA, AND ITS LOCAL 221

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Judicial Review - Abandonment - Bargaining Rights - Constitutional Law - Construction Industry - Construction Industry Grievance - Board finding constitutional issue raised by employer to be <i>res judicata</i> - Fact that there was little contact between union and employer or its employees, or fact that grievances were not filed in all instances of violation of collective agreement (in absence of unambiguous evidence that union knew or reasonably ought to have known of those violations and did nothing) insufficient to warrant finding that union abandoned bargaining rights - Board finding that essential elements of estoppel established in relation to both conduct of local union filing grievance and the employee bargaining agency and other ABAs holding bargaining rights for employer's employees - Board deciding that notice bringing estoppel to an end coming with Board's decision - Board dismissing grievance but declaring that employer bound to recognize union's bargaining rights and bound to existing provincial agreement - Employer's application for judicial review dismissed by Divisional Court	
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Judicial Review - Construction Industry - Construction Industry Grievance - Employee - Board finding off-site fabrication shop employees to be employees in the construction industry and holding that, when engaged in fabrication of ductwork destined for ICI job site, their work is covered by ICI agreement - Application for judicial review dismissed by Divisional Court	
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PETER'S TAXI LIMITED, SANDRA MANDRONIS, MATINA MANDRONIS, NORTH-LAND TAXI AND SAHIB SINGH GHAI, CARL ROTMAN, NOAH ROTMAN, 896896 ONTARIO LTD. O/A LAKESHORE GARAGE, CHRIS CHRONOPOULOS.; RE THE ONTARIO LABOUR RELATIONS BOARD AND RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCAL 1688.....

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Picketing - Charter of Rights and Freedoms - Constitutional Law - Strike - Remedies - Toronto Transit Commission ("TTC") alleging that certain protest leaders and labour organizations violating section 83 of the Act by making certain statements and encouraging picketing at TTC sites in effort to ensure that TTC unable to operate during "Days of Protest" against Provincial Government - Respondents arguing that "talking" and "speaking", as opposed to "acts", not falling within ambit of section 83 - Respondents also arguing that section 83 should be read subject to respondents' Charter rights and that there was no causal connection established between protest leaders statements and unlawful strike that might result - Board dismissing application against labour organizations on grounds that only "persons" may breach section 83 of the Act - Board finding and declaring that two of three named individual respondents violated section 83 of the Act - Individual respondents directed to cease and desist from encouraging persons to picket TTC premises as restricted by the Board - Board prohibiting picketing in and around access points identified by TTC if it will interfere with employees' access to work - Picketing at subway stations also restricted during certain specified hours - Individual respondents directed to advise participants in "Days of Protest" of declarations and directions made by the Board

TORONTO TRANSIT COMMISSION; RE GORD WILSON, SID RYAN, LINDA TORNEY, OFL, CUPE, AND LABOUR COUNCIL OF METROPOLITAN TORONTO; RE MS. MEENU SIKAND-TAYLOR.....

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Practice and Procedure - Adjournment - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Remedies - Unfair Labour Practice - Board not satisfied that medical evidence justifying employer's inability to attend at Board hearing - Adjournment request denied - Board finding employer's threats to close business and subsequent layoff of employees in violation of the Act - Union certified under section 11(1) of the Act

BALKAN GLASS & ALUMINUM INC.; RE PAT, LOCAL UNION 1819 (GLAZIERS).....

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Practice and Procedure - Bargaining Unit - Certification - Board explaining new procedure for resolution of "status" disputes in connection with certification applications - Union and employer agreeing to bargaining unit descriptions excluding office and clerical staff - Parties disputing whether "receptionists" falling within exclusion - In view of parties' agreement on bargaining unit description, Board declining to consider whether including receptionists in bargaining units would create serious labour relations problems - Board also observing that parties should question some long standing assumptions and exclusions traditionally agreed to automatically regarding bargaining units - Board finding receptionists included in office and clerical exclusion and therefore excluded from bargaining units - Certificates issuing

MCGILL CLUB, THE; RE SEIU, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L. C.I.O., C.L.C.

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Practice and Procedure - Certification - Change in Working Conditions Evidence - Construction Industry - Evidence - Intimidation and Coercion - Representation Vote - Unfair Labour Practice - Witness - After conducting inquiry into witness's alleged prior inconsistent statement,

Board declining to declare witness hostile or adverse - Board concluding that union used charges and threat of charges under its constitution to intimidate employees into supporting certification application - Certification application dismissed under section 11(2) of the Act - Board finding that employer violated statutory freeze when it changed wage rate it had agreed to pay to two employees - Compensation ordered

CENTRO MECHANICAL INC.; RE UA, AND ITS LOCAL 221 762

Practice and Procedure - Discharge - Evidence - Health and Safety - Judicial Review - Applicant alleging violation of Occupational Health and Safety Act on basis of discharge described as reprisal for complaint of sexual harassment in workplace - Board declining to dismiss application without a hearing for want of *prima facie* case - Employer's application for judicial review dismissed as premature by Divisional Court

LYNDHURST HOSPITAL; RE PAULINE AU AND THE ONTARIO LABOUR RELATIONS BOARD 902

Practice and Procedure - First Contract Arbitration - Termination - Union's first contract application pending before Board - Employees subsequently filing termination application - Union's response to termination application including allegations of employer initiation or interference in connection with application - Union seeking dismissal of application under section 63(16) of the Act - Board determining that representation vote ought not to be held at this stage and that first contract application and termination application be listed together for hearing

EAST SIDE MARIO'S, BIRSSA HOLDINGS INC. C.O.B. AS; RE LYNDIA ANN FALVO; RE UFCW, LOCAL 175/633 810

Practice and Procedure - Union objecting to presence of court reporter at Board proceeding - Board permitting employer's counsel to make use of court reporter subject to certain conditions - Board also imposing conditions on use by employer counsel of written transcript of proceedings

J.P. MURPHY INC.; RE A GROUP OF EMPLOYEES OF J.P. MURPHY INC.; RE RETAIL WHOLESALE CANADA CANADIAN SERVICE SECTOR, DIVISION OF THE USWA, LOCAL 448 843

Ratification and Strike Vote - Collective Agreement - Construction Industry - Memorandum of settlement between union and employer in construction industry made contingent on ratification - Union submitting agreement to union's accredited delegates and not to employees in the bargaining unit - Board dismissing complaint alleging that provisions of section 79 of the Act requiring employee ratification in these circumstances

IBEW, KEN WOODS, ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL UNION 1788 BY ITS TRUSTEE, IBEW AND ONTARIO HYDRO AND EPSCA AND IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO; RE POWER WORKERS' UNION - CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF IBEW, LOCAL UNION 1788 821

Reconsideration - Adjournment - Judicial Review - Natural Justice - Related Employer - Remedies - Board declaring that some 128 associates of three taxi brokers, together with each of their respective brokers, should be treated as one employer for purposes of the Act - Board making additional orders and directions in accordance with earlier agreement made between union, brokers and group of 47 associates setting up bargaining infrastructure and giving associates

formal role in negotiating process - Divisional Court dismissing application for judicial review alleging that decision patently unreasonable and that applicants were denied natural justice

PETER'S TAXI LIMITED, SANDRA MANDRONIS, MATINA MANDRONIS, NORTH-LAND TAXI AND SAHIB SINGH GHAI, CARL ROTMAN, NOAH ROTMAN, 896896 ONTARIO LTD. O/A LAKESHORE GARAGE, CHRIS CHRONOPOULOS,; RE THE ONTARIO LABOUR RELATIONS BOARD AND RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCAL 1688.....

902

Related Employer - Adjournment - Judicial Review - Natural Justice - Reconsideration - Remedies - Board declaring that some 128 associates of three taxi brokers, together with each of their respective brokers, should be treated as one employer for purposes of the Act - Board making additional orders and directions in accordance with earlier agreement made between union, brokers and group of 47 associates setting up bargaining infrastructure and giving associates formal role in negotiating process - Divisional Court dismissing application for judicial review alleging that decision patently unreasonable and that applicants were denied natural justice

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902

Remedies - Adjournment - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Practice and Procedure - Unfair Labour Practice - Board not satisfied that medical evidence justifying employer's inability to attend at Board hearing - Adjournment request denied - Board finding employer's threats to close business and subsequent layoff of employees in violation of the Act - Union certified under section 11(1) of the Act

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902

Remedies - Charter of Rights and Freedoms - Constitutional Law - Strike - Picketing - Toronto Transit Commission ("TTC") alleging that certain protest leaders and labour organizations violating section 83 of the Act by making certain statements and encouraging picketing at TTC sites in effort to ensure that TTC unable to operate during "Days of Protest" against Provincial Government - Respondents arguing that "talking" and "speaking", as opposed to "acts", not falling within ambit of section 83 - Respondents also arguing that section 83 should be read subject to respondents' Charter rights and that there was no causal connection established between protest leaders statements and unlawful strike that might result - Board dismissing application against labour organizations on grounds that only "persons" may breach section 83 of the Act - Board finding and declaring that two of three named individual respondents violated

section 83 of the Act - Individual respondents directed to cease and desist from encouraging persons to picket TTC premises as restricted by the Board - Board prohibiting picketing in and around access points identified by TTC if it will interfere with employees' access to work - Picketing at subway stations also restricted during certain specified hours - Individual respondents directed to advise participants in "Days of Protest" of declarations and directions made by the Board

TORONTO TRANSIT COMMISSION; RE GORD WILSON, SID RYAN, LINDA TORNEY, OFL, CUPE, AND LABOUR COUNCIL OF METROPOLITAN TORONTO; RE MS. MEENU SIKAND-TAYLOR.....

889

Remedies - Construction Industry - Interference in Trade Unions - Termination - Unfair Labour Practice - Prior to directing representation vote, Board inquiring into union's allegation that employer initiated termination application within meaning of section 63(16) of the Act - Board finding involvement of employer in early stage of process leading to termination application - Board holding that termination application founded in employer's initiation should result in its dismissal absent compelling labour relations reasons why vote should still be held - Termination application dismissed under section 63(16) of the Act - Union's unfair labour practice application alleging interference with union's representation of employees allowed - Cease and desist order issuing

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Remedies - Construction Industry - Interim Relief - Unfair Labour Practice - Applicants alleging that International union, through trusteeship has made unlawful use of local union's assets, has improperly imposed dues increase on members and has conducted itself improperly in negotiating new collective agreements to detriment of members of local union - Applicants seeking interim order staying implementation of new collective agreements - Board concluding that it is without jurisdiction under section 98 of the Act to grant the interim order sought, but that Statutory Powers Procedure Act confers jurisdiction on Board to provide substantive interim relief, including the order sought - Board dismissing application for interim relief because of applicants' undue delay

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, KEN WOODS, ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL UNION 1788 BY ITS TRUSTEE, IBEW AND ONTARIO HYDRO AND EPSCA; RE POWER WORKERS' UNION - CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT, AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF IBEW, LOCAL UNION 1788

826

Remedies - Crown Employees Collective Bargaining Act - Employee - Interim Relief - Union applying to have Board determine whether certain persons should be excluded from its bargaining units as result of Bill 7 changes to Crown Employees Collective Bargaining Act - Union also asking for interim order that disputed individuals not be excluded pending Board's determination of the issue - Board considering its jurisdiction to make interim orders and concluding that Bill 7 amendments only give Board power to make interim orders dealing with conduct of proceedings and related matters - Board also concluding that Statutory Powers Procedure Act ("SPPA") granting Board general power to grant interim orders and that that power prevails over conflicting provision in Labour Relations Act - Board indicating that it will exercise its SPPA interim order jurisdiction (where discharges and reinstatement requests are not in issue) in a manner similar to the approach previously utilized by the Board prior to Bill 7 - Board denying interim order request here because harm in granting or withholding

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780

Representation Vote - Certification - Change in Working Conditions Evidence - Construction Industry - Evidence - Intimidation and Coercion - Practice and Procedure - Unfair Labour Practice - Witness - After conducting inquiry into witness's alleged prior inconsistent statement, Board declining to declare witness hostile or adverse - Board concluding that union used charges and threat of charges under its constitution to intimidate employees into supporting certification application - Certification application dismissed under section 11(2) of the Act - Board finding that employer violated statutory freeze when it changed wage rate it had agreed to pay to two employees - Compensation ordered

CENTRO MECHANICAL INC.; RE UA, AND ITS LOCAL 221

762

Representation Vote - Certification - Construction Industry - Employee - Board not accepting employer's submission that employees not employed on the certification application filing date should be entitled to cast ballots in representation vote - Board finding contested employee to be employed in bargaining unit on application date - Board directing Registrar to have ballots counted in accordance with its decision

KEN ANDERSON ELECTRIC INC.; RE IBEW, LOCAL 402

846

Representation Vote - Certification - Trade Union - Trade Union Status - Employer asserting that employees affected by certification application already represented by employees' association, that employees' association a trade union within meaning of the Act, and that employer and employees' association parties to a collective agreement within meaning of the Act - Certification application timely even assuming that employer's assertions correct - Board directing representation vote in which employees asked to cast two ballots - First ballot to ask voters whether they wish to be represented by applicant union - Second ballot to ask voters whether they wish to be represented by applicant union or employees' association - Issue of status of employees' association to be determined at hearing following the vote

CANARM LTD.; RE USWA; RE CANARM EMPLOYEES ASSOCIATION

747

Strike - Charter of Rights and Freedoms - Constitutional Law - Picketing - Remedies - Toronto Transit Commission ("TTC") alleging that certain protest leaders and labour organizations violating section 83 of the Act by making certain statements and encouraging picketing at TTC sites in effort to ensure that TTC unable to operate during "Days of Protest" against Provincial Government - Respondents arguing that "talking" and "speaking", as opposed to "acts", not falling within ambit of section 83 - Respondents also arguing that section 83 should be read subject to respondents' Charter rights and that there was no causal connection established between protest leaders statements and unlawful strike that might result - Board dismissing application against labour organizations on grounds that only "persons" may breach section 83 of the Act - Board finding and declaring that two of three named individual respondents violated section 83 of the Act - Individual respondents directed to cease and desist from encouraging persons to picket TTC premises as restricted by the Board - Board prohibiting picketing in and around access points identified by TTC if it will interfere with employees' access to work - Picketing at subway stations also restricted during certain specified hours - Individual respondents directed to advise participants in "Days of Protest" of declarations and directions made by the Board

TORONTO TRANSIT COMMISSION; RE GORD WILSON, SID RYAN, LINDA TORNEY, OFL, CUPE, AND LABOUR COUNCIL OF METROPOLITAN TORONTO; RE MS. MEENU SIKAND-TAYLOR

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Strike - Employer seeking, but failing to obtain, commitment from union that it will not condone and that members will not engage in work stoppage as result of "Days of Protest" against provincial government - Employer asserting that union and union official threatening to call unlawful strike and that certain employees threatening to engage in unlawful strike in connection with "Days of Protest" - Employer's application dismissed

LIVENT INC.; RE IATSE, LOCAL #58, TORONTO AND JAMES C. FULLER..... 870

Termination - Certification - Construction Industry - Evidence - Trade Union - Trade Union Status - Unfair Labour Practice - Board dismissing submission that decision in *Canadian Union of Shinglers & Allied Workers* case determinative of issue of employee status of crew leaders in residential roofing industry - *Res judicata* not applying to Board's finding regarding crew leaders in earlier case

DOMINION SHEET METAL & ROOFING WORKS; RE LIUNA, LOCAL 183; RE CANADIAN UNION OF SHINGLERS & ALLIED WORKERS, CJA, LOCAL 27 795

Termination - Construction Industry - Interference in Trade Unions - Remedies - Unfair Labour Practice - Prior to directing representation vote, Board inquiring into union's allegation that employer initiated termination application within meaning of section 63(16) of the Act - Board finding involvement of employer in early stage of process leading to termination application - Board holding that termination application founded in employer's initiation should result in its dismissal absent compelling labour relations reasons why vote should still be held - Termination application dismissed under section 63(16) of the Act - Union's unfair labour practice application alleging interference with union's representation of employees allowed - Cease and desist order issuing

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DOMINION SHEET METAL & ROOFING WORKS; RE LIUNA, LOCAL 183; RE CANADIAN UNION OF SHINGLERS & ALLIED WORKERS, CJA, LOCAL 27 795

Trade Union - Certification - Representation Vote - Trade Union Status - Employer asserting that employees affected by certification application already represented by employees' association, that employees' association a trade union within meaning of the Act, and that employer and employees' association parties to a collective agreement within meaning of the Act - Certification application timely even assuming that employer's assertions correct - Board directing representation vote in which employees asked to cast two ballots - First ballot to ask voters whether they wish to be represented by applicant union - Second ballot to ask voters whether

they wish to be represented by applicant union or employees' association - Issue of status of employees' association to be determined at hearing following the vote

CANARM LTD.; RE USWA; RE CANARM EMPLOYEES ASSOCIATION 747

Trade Union Status - Certification - Construction Industry - Evidence - Termination - Trade Union - Unfair Labour Practice - Board dismissing submission that decision in *Canadian Union of Shinglers & Allied Workers* case determinative of issue of employee status of crew leaders in residential roofing industry - *Res judicata* not applying to Board's finding regarding crew leaders in earlier case

DOMINION SHEET METAL & ROOFING WORKS; RE LIUNA, LOCAL 183; RE CANADIAN UNION OF SHINGLERS & ALLIED WORKERS, CJA, LOCAL 27 795

Trade Union Status - Certification - Representation Vote - Trade Union - Employer asserting that employees affected by certification application already represented by employees' association, that employees' association a trade union within meaning of the Act, and that employer and employees' association parties to a collective agreement within meaning of the Act - Certification application timely even assuming that employer's assertions correct - Board directing representation vote in which employees asked to cast two ballots - First ballot to ask voters whether they wish to be represented by applicant union - Second ballot to ask voters whether they wish to be represented by applicant union or employees' association - Issue of status of employees' association to be determined at hearing following the vote

CANARM LTD.; RE USWA; RE CANARM EMPLOYEES ASSOCIATION 747

Unfair Labour Practice - Adjournment - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Practice and Procedure - Remedies - Board not satisfied that medical evidence justifying employer's inability to attend at Board hearing - Adjournment request denied - Board finding employer's threats to close business and subsequent layoff of employees in violation of the Act - Union certified under section 11(1) of the Act

BALKAN GLASS & ALUMINUM INC.; RE PAT, LOCAL UNION 1819 (GLAZIERS) 717

Unfair Labour Practice - Certification - Change in Working Conditions Evidence - Construction Industry - Evidence - Intimidation and Coercion - Practice and Procedure - Representation Vote - Witness - After conducting inquiry into witness's alleged prior inconsistent statement, Board declining to declare witness hostile or adverse - Board concluding that union used charges and threat of charges under its constitution to intimidate employees into supporting certification application - Certification application dismissed under section 11(2) of the Act - Board finding that employer violated statutory freeze when it changed wage rate it had agreed to pay to two employees - Compensation ordered

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DOMINION SHEET METAL & ROOFING WORKS; RE LIUNA, LOCAL 183; RE CANADIAN UNION OF SHINGLERS & ALLIED WORKERS, CJA, LOCAL 27 795

Unfair Labour Practice - Construction Industry - Interference in Trade Unions - Remedies - Termination - Prior to directing representation vote, Board inquiring into union's allegation that employer initiated termination application within meaning of section 63(16) of the Act - Board finding involvement of employer in early stage of process leading to termination application - Board holding that termination application founded in employer's initiation should result in its dismissal absent compelling labour relations reasons why vote should still be held - Termination

application dismissed under section 63(16) of the Act - Union's unfair labour practice application alleging interference with union's representation of employees allowed - Cease and desist order issuing

BYTOWN ELECTRICAL SERVICES LTD.; RE SHAWN JOSEPH ARSENAULT; RE IBEW AND THE IBEW CONSTRUCTION COUNCIL OF ONTARIO, LOCALS 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, 894, 1687 AND 1739.....

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Unfair Labour Practice - Construction Industry - Interim Relief - Remedies - Applicants alleging that International union, through trusteeship has made unlawful use of local union's assets, has improperly imposed dues increase on members and has conducted itself improperly in negotiating new collective agreements to detriment of members of local union - Applicants seeking interim order staying implementation of new collective agreements - Board concluding that it is without jurisdiction under section 98 of the Act to grant the interim order sought, but that Statutory Powers Procedure Act confers jurisdiction on Board to provide substantive interim relief, including the order sought - Board dismissing application for interim relief because of applicants' undue delay

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, KEN WOODS, ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL UNION 1788 BY ITS TRUSTEE, IBEW AND ONTARIO HYDRO AND EPSCA; RE POWER WORKERS' UNION - CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT, AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF IBEW, LOCAL UNION 1788

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0264-96-R; 0356-96-U International Brotherhood of Painters and Allied Trades, Local Union 1819 (Glaziers), Applicant v. **Balkan Glass & Aluminum Inc.**, Responding Party; International Brotherhood of Painters and Allied Trades, Local Union 1819 (Glaziers), Applicant v. **Balkan Glass Aluminum Inc.**, Responding Party

Adjournment - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Practice and Procedure - Remedies - Unfair Labour Practice - Board not satisfied that medical evidence justifying employer's inability to attend at Board hearing - Adjournment request denied - Board finding employer's threats to close business and subsequent layoff of employees in violation of the Act - Union certified under section 11(1) of the Act

BEFORE: *Robert Herman*, Alternate Chair, and Board Members *F. B. Reaume* and *G. McMemeny*.

APPEARANCES: *Joseph Russo, Sean Keogh, John Templeton, John Belainsky* and *Alexander Pokinsocha* for the applicant; *Michael Mitchell* and *John Kuzev* for the responding party.

DECISION OF THE BOARD; September 5, 1996

1. This is a certification application, in which the applicant relies upon the provisions of section 11 of the *Labour Relations Act, 1995*, together with an unfair labour practice complaint.

2. At the originally scheduled hearing day, no one appeared on behalf of the responding party, **Balkan Glass**, and for reasons expressed by the Board in an earlier decision of June 3, 1996, that matter was adjourned, to Thursday, June 12, 1996, peremptory to the responding party.

3. On that day, John Kuzev, the President of the responding party, appeared outside the hearing room, but indicated that he was unable to proceed, and refused to enter the hearing room. An adjournment was requested on his behalf by corporate counsel for the responding party, Mr. Mitchell, who arrived after the commencement of the hearing, and was appearing on Mr. Kuzev's behalf solely for the purposes of requesting the adjournment. He requested the adjournment on the basis that Mr. Kuzev was in considerable physical stress, had to be taken to the hospital, and was incapable of proceeding. He advised the Board that regardless of the Board's decision with respect to the adjournment request, Mr. Kuzev would be leaving shortly and would not be either entering the hearing room or remaining for the hearing.

4. In the result, the Board ruled orally (and issued a written decision setting out the oral decision on June 14, 1996) that the Board would reserve on the adjournment request, until such time as Mr. Kuzev was able to forward medical evidence in support of his request, and that the Board would continue and hear the merits, but reserve on the merits until such time as it decided whether the adjournment should be granted as requested.

5. The Board has now received the material from the responding party in support of the adjournment request made by Mr. Kuzev. In the result, the adjournment is denied.

6. As noted, when the matter was initially scheduled for hearing, no one appeared on behalf of the responding party. The Board received a fax the morning of the hearing indicating that the responding party, identified as Mr. Kuzev, would be unable to attend. The only reason given in the fax was the assertion that "due to my personal problem that came up this morning and which requires immediate attention" Mr. Kuzev would be unable to attend. Notwithstanding the lack of detailed reasons for the adjournment request, the Board did grant the adjournment, making the subsequent hearing peremptory to the responding party, and indicating the responding party was to be prepared to proceed.

7. When hearing resumed on June 12, Mr. Kuzev refused to enter the hearing room. No prior notice of the adjournment request was provided by Mr. Kuzev, notwithstanding the clear indication in the Board's prior decision that the matter was peremptory to the responding party, and notwithstanding Mr. Kuzev's non-appearance on the first scheduled hearing day. Nor did the responding party arrange for any person other than Mr. Kuzev to attend on its behalf, nor did anyone on behalf of the responding party make any submissions suggesting why only Mr. Kuzev could represent it.

8. On both occasions, no prior notice having been provided to the applicant, the applicant arranged for its three witnesses to attend at the hearing, and on both occasions the applicant was prepared to and wished to proceed with the hearing.

9. Turning to the medical evidence submitted on behalf of the responding party, the responding party submitted a hospital report, detailing the hospital visit by Mr. Kuzev at approximately 12:45 p.m. on the same day as the hearing. That report indicates that Mr. Kuzev was "stressed with union problems, and it appears to indicate was suffering from "chest pain". In terms of diagnosis, the doctor indicated "anxiety". It appears from the hospital report itself that the stress and anxiety which the doctor found Mr. Kuzev to be experiencing flowed from the company's union problems. And indeed, other documentation submitted to the Board from friends and relatives of Mr. Kuzev appeared to verify the source of Mr. Kuzev's anxiety and stress: that his company might become unionized, and the union was causing him significant problems.

10. We have some difficulty with the proposition that the stress or anxiety that a principal of a responding party might experience because of a fear of unionization is sufficient reason to cause continual adjournments of a hearing, particularly when there is no indication that no one else could appear on behalf of the company, and where there is indication that the company is continuing to operate in business during the same period.

11. The responding party also submitted a letter dated June 17, 1996, five days after the hearing, from Mr. Kuzev's doctor, which indicates that Mr. Kuzev "appears to be under severe stress and anxiety", and further indicates that the doctor is arranging for a psychiatrist to assess Mr. Kuzev. As pointed out by counsel for the applicant, in responding to the medical evidence, neither of the two medical reports suggests any underlining physical condition affecting Mr. Kuzev, but both seem to indicate that he is experiencing psychological problems. There are no indications of a heart problem or a heart attack, except as noted in the hospital's report that there was some "chest pain".

12. In these circumstances, we are not satisfied that Mr. Kuzev was in fact unable to attend at the hearing and participate in the hearing on June 12, 1996, or alternatively, that the responding party was not able to arrange for someone else to attend on its behalf. The medical evidence does not justify the inability of the responding party to be able to proceed that day, given that the matter was peremptory, and given all the circumstances. Accordingly, the adjournment is denied.

13. Turning to the merits, the Board heard the evidence from two witnesses, both employees of the responding party. Both had been hired by Balkan Glass, to perform glazier work, and at the time of hiring, around October, 1995, neither had been told by Mr. Kuzev that they were only being hired on a temporary basis.

14. Both employees worked on a number of projects for the company, and both were told that their work quality was satisfactory and that Balkan Glass did not have any problems with how they were working. Both signed union cards, applying for membership in the applicant, some time before April 25, 1996. However, on that date Mr. Kuzev convened a meeting of all the employees, at which he showed the employees a letter which he had typed, which stated that the undersigned did not wish to have a union in the company. Mr. Kuzev then put this letter in front of the employees and indicated

that the employees had to sign it. He also told the employees that if they did not sign it, he would have to lay them off, and close the company.

15. The employees did not sign the letter. Mr. Kuzev later phoned some of them at home that night, and they told him that they still wanted time to think about whether to sign the letter. In response, Mr. Kuzev told one of the employees he phoned that the employee was too stubborn, and that he would have to lay him off and all the rest of the employees, and close the company.

16. When the employees attended at work the next day, several of them received their separation certificates, along with their final paycheques, and they were laid off. Nevertheless, Balkan Glass continued to perform work at the projects at which the employees had been working prior to their lay off.

17. Based on these facts, the applicant asserts that the responding party breached sections 70, 72 and 76 of the *Labour Relations Act, 1995*, and in addition to a declaration that the responding party breached the Act, asks that the applicant be automatically certified pursuant to section 11 of the Act.

18. Those sections of the Act read as follows:

11.(1) Upon the application of a trade union, the Board may certify the trade union as the bargaining agent for the employees in a bargaining unit in the following circumstances:

1. An employer, employers' organization or person acting on behalf of an employer or employers' organization has contravened the Act.
2. The result of the contravention is that a representation vote does not or would not likely reflect the true wishes of the employees in the bargaining unit about being represented by the trade union.
3. No other remedy, including the taking of another representation vote, is sufficient to counter the effects of the contravention.
4. The trade union has membership support adequate for the purposes of collective bargaining in a bargaining unit found by the Board to be appropriate for collective bargaining.

(2) Upon the application of an interested person, the Board may dismiss an application for certification of a trade union as the bargaining agent for the employees in a bargaining unit in the following circumstances:

1. A trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions has contravened the Act.
2. The result of the contravention is that a representation vote does not or would not likely reflect the true wishes of the employees in the bargaining unit about being represented by the trade union.
3. No other remedy, including the taking of another representation vote, is sufficient to counter the effects of the contravention.

(3) The Board may consider the results of a representation vote when making a decision under this section.

(4) Subsections 10(1) and (2) do not apply with respect to a representation vote taken in the circumstances described in this section.

70. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

72. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

76. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

19. To be certified under section 11 of the Act, certain conditions must be met. We turn first to whether the responding party committed unfair labour practice and breached the Act in any respect. In demanding that employees sign statements opposing the union, in threatening that they would be laid off and the company closed if they did not, and in actually laying them off for their failure to sign such statements and to actively oppose the union, the company has clearly breached sections 70, 72 and 76 of the Act. This employer, through the actions of its principal Mr. Kuzev, interfered in an inappropriate and unlawful manner with the employees of the company, seeking to intimidate and coerce them into actively opposing the union. The employer also sought to and did in fact penalize them for their refusal to do so.

20. Insofar as remedies for these breaches of the Act are concerned, the applicant is not seeking an order reinstating any of the employees who were unlawfully laid off, nor is it seeking any orders with respect to compensation.

21. We turn next to the second aspect necessary under section 11 of the Act. We are satisfied that the nature of the contravention here is such that a representation vote would not likely reflect the true wishes of the employees in the bargaining unit. The Board has in the past automatically certified an applicant where the actions of an employer have been of the nature of threats to close the business should the employees support the union. Here threats such as these were followed by lay-offs designed to convey to employees the direct and immediate cost of their failure to comply with the employer's directions in this respect. The message to employees would be clear: that the employer would actively take steps to ensure that employees were penalized should they support the union, that those steps included immediate discharge, and that a vote for the union would be an invitation to further reprisals. In these circumstances, the Board concludes that the true wishes of employees would not likely be reflected through a representation vote.

22. And with respect to the third requirement under section 11, we also conclude that no other remedial response, short of automatic certification, would meaningfully correct the effects of the unfair labour practice engaged in by the employer.

23. With respect to the last requirement under section 11, that the trade union has membership support adequate for the purposes of collective bargaining in a bargaining unit found by the Board to be appropriate, the applicant filed membership cards on behalf of four employees who properly fall within the bargaining unit in question. Although three of those employees were challenged by the responding party, on the basis that they were laid off, we have here concluded that those lay-offs were themselves an unfair labour practice, and accordingly those employees were properly in the bargaining unit at the relevant time.

24. Thus, the level of membership support represents over 50% of the employees in the bargaining unit, and we are satisfied that this is membership support adequate for the purposes of collective bargaining.

25. In all these circumstances, certificates will issue forthwith to the applicant, pursuant to section 11 of the Act, with respect to the bargaining units found to be appropriate in paragraph 6 of the Board's prior decision of April 26, 1996.

0448-95-R; 0966-95-U Shawn Joseph Arsenault, Applicant v. International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario, Locals 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, 894, 1687 and 1739, Responding Parties v. **Bytown Electrical Services Ltd.**, Intervenor; International Brotherhood of Electrical Workers, Local 586, Applicant v. Bytown Electrical Services Ltd., Responding Party

Construction Industry - Interference in Trade Unions - Remedies - Termination - Unfair Labour Practice - Prior to directing representation vote, Board inquiring into union's allegation that employer initiated termination application within meaning of section 63(16) of the Act - Board finding involvement of employer in early stage of process leading to termination application - Board holding that termination application founded in employer's initiation should result in its dismissal absent compelling labour relations reasons why vote should still be held - Termination application dismissed under section 63(16) of the Act - Union's unfair labour practice application alleging interference with union's representation of employees allowed - Cease and desist order issuing

BEFORE: *Christopher Albertyn*, Vice-Chair, and Board Members *R. M. Sloan* and *G. McMenemy*.

APPEARANCES: *Roger Mills* and *Shawn Arsenault* for the applicant; *Michael Gottheil*, *Ken Scott* and *Steven Bradley* for the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario, Locals 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, 894, 1687 and 1739; *Michael S. Ruddy* and *Guy Boyd* for Bytown Electrical Services Ltd.

DECISION OF CHRISTOPHER ALBERTYN, VICE-CHAIR, AND BOARD MEMBER G. MCMENEMY; September 30, 1996

1. These applications were heard together. One is an application under subsection 63(2) of the *Labour Relations Act, 1995* (“the Act”) for the order of a vote by employees as to whether the union’s ICI bargaining rights with Bytown Electrical Services Ltd. (sometimes referred to as “the company” or as “Bytown”) should be terminated. The other is an application by the union claiming that Bytown has violated sections of the Act, including section 70 and subsection 63(16), by initiating the termination application.

Background

2. Bytown carries on business out of Ottawa and its surrounding areas as an electrical contractor in the ICI and residential sectors of the construction industry. It was bound by the ICI provincial collective agreement between the Electrical Trades Bargaining Agency (ETBA) of the Electrical Contractors’ Association of Ontario (ECAO) and the union (and the IBEW Construction Council of Ontario) effective May 1, 1992 to April 30, 1995, when Mr. Arsenault’s termination application was made. Bytown is bound also by the residential collective agreement between the Electrical Contractors’ Association of Ottawa and IBEW Local 586. The residential agreement has a different expiry date. The termination application applies only to the ICI collective agreement.

3. Both applications (for termination of bargaining rights and the union’s application for relief against Bytown) were launched before the 1995 amendments to the Act. At that stage the parties agreed that the voluntariness of the petition for the termination application was the only matter in issue between them. Following the 1995 amendments to the *Labour Relations Act*, that issue was replaced by the question of whether or not Bytown initiated the termination application, as understood under subsection 63(16) of the Act. That subsection reads:

63. (16) Despite subsections (5) and (14), the Board may dismiss the application if the Board is satisfied that the employer or a person acting on behalf of the employer initiated the application or engaged in threats, coercion or intimidation in connection with the application.

The union focused less upon the contention that Bytown or Mr. Boyd had “engaged in threats, coercion or intimidation in connection with the application”. The union’s principal argument was that “the employer or a person acting on behalf of the employer *initiated* the application ...”. [emphasis added].

4. In the documents filed by the parties prior to the hearing two conflicting versions of events were presented by the union and by Bytown. The union alleged that Mr. Boyd, one of Bytown’s directors and its principal officer, had conspired with Mr. Arsenault to bring the termination application, or that Mr. Boyd otherwise pressured and induced Mr. Arsenault to make the application, thereby being its effective initiator. The union indicated that it intended to call Mr. Bradley, a fellow employee of Mr. Arsenault at Bytown at the relevant times, who would testify that Mr. Boyd had made clear to him and Mr. Arsenault that their job security depended upon Bytown going non-union.

5. In reply, Bytown alleged that Mr. Bradley had had various conversations with his estranged wife, in which he had said that he had conspired with Mr. Scott, the union’s Business Agent, to claim that Mr. Boyd was involved in Mr. Arsenault’s termination application, when that was not in fact so. In return for such false testimony, so Bytown alleged, Mr. Bradley would be assured of work from the union elsewhere in the province.

6. So, prior to the hearing, the documents suggested two rival and conflicting conspiracies: one between Mr. Boyd, Bytown’s manager, and Mr. Arsenault to bring the termination application; the other between Mr. Scott, the union’s Business Manager, and Mr. Bradley, the union’s witness, of Mr. Boyd’s alleged violations of the Act.

7. We heard several days of evidence, in Toronto and Ottawa. What emerged was less startling than the documents had suggested and the differences in the competing versions were also less stark. As we expected from the documents filed, the evidence manifested many disputes of fact, but there were no manifest conspiracies. In seeking to find the most probable explanation of what occurred from the evidence of the various witnesses, we have had to determine the credibility of their testimony. We indicate our findings of credibility as we narrate what we regard as the most probable account of what occurred. We mention where there were disputes of fact, and why we favour one version over another. In assessing credibility we have used the usual standard applied by the Board, taking into account such relevant considerations as the clarity of memory, the natural deterioration of memory over time, the internal consistency of a witness's testimony, the consistency of the testimony of different witnesses, the consistency of the testimony in relation to the circumstantial evidence, the ability of the witness to resist the tug of self-interest and the witness's demeanour. Throughout we have sought to determine the inherent probabilities of the factual issues in dispute.

Facts

8. The union is the collective bargaining agent of all electricians and apprentices of Bytown in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman, and of those working in the residential sectors in the Counties of Carleton, Lanark, Prescott, Russell and Renfrew in the Province of Ontario. It was voluntarily recognized by Bytown on April 24, 1985, when the company agreed in writing to be bound by the applicable provincial collective agreement. Since then the union has continuously been the collective bargaining agent of Bytown's employees.

9. Bytown is a small electrical contracting company. About 95% of its work is in the ICI sector, about 5% is residential. The relationship between management and employees is relatively close-knit and personal. Besides Mr. Boyd, who is the managing director of the company, and one silent partner in the business, the other shareholder works as an electrician within the company. Mr. Boyd customarily socializes with the company's employees. He has arranged for social gatherings for the company's staff (management and employees), including a weekend at Alexandria Bay and the company has paid for all of the expenses and meals. All of the employees, including Mr. Arsenault, attended the parties arranged by Mr. Boyd. Mr. Arsenault regards himself as being a friend of Mr. Boyd. He has confided in Mr. Boyd, discussing family matters of concern to himself with Mr. Boyd and he has discussed other matters of interest to himself with Mr. Boyd. But Mr. Arsenault denies ever discussing the financial and economic circumstances of the company, or his decertification application.

10. In contrast Mr. Bradley, the union's witness, claims that he and Mr. Boyd discussed any topic freely between themselves, including the financial state of the company. That was frequently their topic of discussion because the company was going through a difficult period during the time of Mr. Bradley's employment. He says that Mr. Boyd complained that the company was paying too much in benefits and salaries and he thought that the solution lay in going non-union. Mr. Boyd denies any conversation with Mr. Bradley as regards any of the financial demands upon the company, including any demands from the industry benefit plans. Mr. Boyd denies ever discussing the state of the company's finances with Mr. Bradley.

11. Mr. Bradley claims that Mr. Boyd frequently suggested that the company go non-union. He says that Mr. Boyd suggested that if the company operated non-union, then instead of the employees being laid off, they could secure full-time positions with the company. Mr. Boyd denies any such discussion. In fact, Mr. Boyd went so far as to state that the mere thought of working in a non-union environment did not enter his head until after he received Mr. Arsenault's decertification application. Mr. Bradley claims that this type of conversation was extremely frequent and that Mr. Arsenault would

have been present on occasions when Mr. Boyd was recommending that everyone would be better off if the company were non-union. In Mr. Bradley's words, Mr. Boyd hated the union because of the pressure it was putting on Bytown, and he constantly attacked and cursed the union. Mr. Bradley claims that Mr. Boyd made his non-union preference clear and he urged and encouraged him and Mr. Arsenault to bring a decertification application. Mr. Boyd and Mr. Arsenault deny Mr. Bradley's allegation that Mr. Boyd requested Mr. Bradley and Mr. Arsenault to apply to decertify the union.

12. Mr. Scott, the union's business manager, claims that he spoke to former employees of Bytown, Burke Nugent and Steven Shaw, both of whom were laid off before Mr. Bradley, and they informed him that Mr. Boyd was constantly railing against the union, pleading for its decertification. That is hearsay evidence, elicited during cross-examination of Mr. Scott, and we treat it as being of little weight as to the truth of the content. Mr. Scott says that he did not act upon that information because he regarded Mr. Arsenault as a good union member and he did not anticipate anything coming from Mr. Boyd's solicitation among Bytown's employees to secure a decertification application. Mr. Boyd denies ever suggesting or inducing any employee to apply to decertify the union.

13. The termination application by Mr. Arsenault was made on April 29, 1995. On that date he was the only employee in the bargaining unit and he worked for only one hour on that day. In a previous decision of the Board in this matter, by a different panel, on September 21, 1995, the Board found that Mr. Arsenault's one hour's work on the application date was sufficient to entitle him to bring the application.

14. Mr. Boyd and Bytown claim that they had no knowledge whatsoever of Mr. Arsenault's termination application until Mr. Boyd received a copy of it in the mail, sent to him by the Registrar of the Board. Prior thereto he claims that he had promised no inducement to Mr. Arsenault, nor had he had any discussion whatsoever with Mr. Arsenault in respect of his application. He made no threat, nor any promise to Mr. Arsenault.

15. Bytown complied with its obligations under the collective agreements to the union and to the Electrical Industry of Ottawa benefit plans between the time of its voluntary recognition of the union in 1985 and about 1991. Its compliance included its submitting monthly reports and making the required remittances and contribution payments to the benefit plans.

16. The company suffered a severe downturn in business during 1991 and it found itself with substantial business and cash flow difficulties. It could not afford to pay the remittances and contributions due to the Union, so Mr. Boyd stopped sending the requisite monthly reports and any money to the industry benefit plans. Mr. Boyd was under the mistaken impression that it was not necessary to send the company's monthly reports because he could not make payment of the requisite contributions.

17. The company's financial difficulties arose from some significant defaulting in payment by its customers. Mr. Boyd suffered a heart attack in July 1993 and he was diagnosed to be suffering from congestive heart failure. The company's financial difficulties were not restricted to its obligations to the electrical industry's benefit plans. It was indebted elsewhere. Revenue Canada assessed that the company had a considerable liability in respect of arrear GST payments.

18. In response to its financial crisis, the company did not remit the amounts payable to the electrical industry benefit plans from the salaries of its employees and its own collective agreement obligations. It paid vacation pay directly to its employees, rather than remitting the amounts due under the collective agreement to the benefit plans. The company's failure to remit union dues put its employees' union membership in jeopardy.

19. Bytown's employees were aware of the company's difficulties, whether by being told of the hard times by Mr. Boyd or because their vacation pay and union dues were not paid to the union and they would be notified by the union that the company was in arrear with the payments. They would also not be entitled to vacation pay. An employer's remittances to the benefit plans include vacation pay, health benefits coverage and union dues. Those amounts were not being covered by Bytown for extended periods between 1991 and 1995.

20. Bytown remained in financial difficulty until about the fall of 1993. In November 1993 it was able to resume payments of remittances to the union. Mr. Boyd filed reports on a retrospective basis, commencing with a report for 1991, with payment of some of the remittances and contributions due to the Union.

21. Mr. Scott, the union's Business Manager, has known Mr. Boyd since 1988. At that time he had discovered that Bytown had an apprentice working non-union, despite the company's voluntary recognition of the union in 1985. There were no other difficulties until the company's financial problems in 1991, when it ceased sending remittances to the industry's benefit funds. The electrical industry benefit fund administrators' practice is to send a form letter to the defaulting employer, requesting payment and imposing a penalty for late payment of the dues. If the employer provides a reasonable explanation for the default, then usually the penalty will be waived. If no explanation is forthcoming, then the penalty becomes part of the amount claimed from the employer by the fund administrators. Mr. Scott had several discussions with Mr. Boyd from 1991 onwards concerning Bytown's default of payment of the employer remittances to the benefit funds. Mr. Scott recalls waiving the penalty on at least one occasion.

22. Mr. Boyd, by his own account and that of Mr. Bradley and Mr. Scott, has a volatile or excitable personality. He loses his temper easily and speaks his mind freely. Mr. Bradley and Mr. Scott say that on several occasions Mr. Boyd spoke fiercely against the union, blaming the union for lack of sympathy for the company's financial predicament and accusing the union of causing the company's financial woes. When the company's counsel questioned the union's witnesses, he did so on the assumption that at times Mr. Boyd may have spoken somewhat intemperately, somewhat excessively, even cursed the union, but that in the circumstances, his outbursts and his anger were random and spur of the moment reactions to a difficult situation. The company's counsel suggested that the excessive or exaggerated expressions of antipathy which Mr. Boyd might have made against the union were said in anger, and not with intent. Of all the witnesses, only Mr. Arsenault denied that Mr. Boyd spoke out against the union.

23. Mr. Scott's recollection of his conversations with Mr. Boyd is that Mr. Boyd was excitable whenever he discussed the company's arrear remittances and the consequent penalty imposition. Mr. Scott recalls Mr. Boyd ranting and raving, screaming and shouting, to use his description of the tone of the telephone conversations between them. During one conversation Mr. Boyd claimed that the company was being penalized without notice from the union. Mr. Scott pointed out that the company had received notices of the arrears and of the penalties from the benefit plans administrators, Coughlin & Associates. Mr. Scott says that Mr. Boyd then laughed, saying, "I file those in the garbage". Mr. Boyd denies that he said that. In another conversation Mr. Scott claims that Mr. Boyd was abusive and told him what he could do with his penalties. Mr. Boyd often told Mr. Scott to "get off my back".

24. There were plainly times in Mr. Boyd's conversations with Mr. Scott when Mr. Boyd was not abusive or angry, when he tried to persuade Mr. Scott to give Bytown some concession or indulgence to accommodate the difficult trading circumstances the company faced. Mr. Boyd would say that he felt he had a plan of action which would eventually pay off, that he needed an opportunity to meet the company's various financial obligations and that once the company was on a more firm footing he

would ensure that the arrear remittances owed to the union [meaning the benefit funds] would be paid. On such occasions Mr. Scott would explain to Mr. Boyd that he had to send the remittance sheets every month and that he had to respond, and not ignore, the letters of demand he received from the benefit plan administrators. Mr. Scott recommended that Bytown at least pay something every month so as to avoid the imposition of penalties. He said that the benefit plan trustees wanted to see some effort, some endeavour by Bytown to try to meet its payments. That is not what Mr. Boyd wanted to hear. He wanted a full indulgence, to be excused payment of any penalty in respect of the arrears. Mr. Scott was not willing to consider recommending the waiver of penalties until Bytown was complying with its monthly obligations under the collective agreement. Once the actual remittances and the arrears were being paid he was willing to look at the penalties. He wanted to see Bytown complying with the agreement before he was willing to waive past penalties. Mr. Boyd interpreted Mr. Scott's attitude as being unreasonable and unsympathetic towards Bytown. He believed that Mr. Scott (and the union) were hurting Bytown and preventing it from getting back onto its financial feet. He resented Mr. Scott and the union and he blamed them for the company's financial troubles.

25. By the end of 1993 Bytown's cash flow improved to the point that it could start attending to the payment of the arrears it owed to the benefit plans. Mr. Boyd then resumed the submission of remittance reports and he sought to make payment of the arrears. It was from that time that his conversations regarding the penalties and the arrears with Mr. Scott began. They would continue until April 1995, when Mr. Arsenault's termination application was brought.

26. The company's remittance reports and remittances for 1991 and for January to April 1992 work were received by the benefit plans in November 1993. The penalties for that period remained unpaid until a meeting which took place on April 24, 1995, which is more fully described below. The remittance reports and remittances for May to December 1992 and for January to May 1993 were received in December 1993. The penalties for that period remained unpaid until the meeting of April 24, 1995. The remittance reports and remittances for June 1993 to March 1994 were received in April 1994. The penalties for that period remained unpaid until the meeting of April 24, 1995. Other late remittances also incurred penalties.

27. During the long period of Bytown's default of payments to the benefit plans the company at all times paid to its employees the wage rates stipulated in the collective agreement.

28. Certain of the letters of demand for payment from Coughlin & Associates on behalf of the benefit plans sent to the company were produced at the hearing: those of August 25, 1994, September 14, 1994, February 10, 1995, April 3, 1995 and April 5, 1995. The practice of the benefit plans trustees is to send notice of non-payment of remittances to the delinquent employer and, failing payment thereafter, to refer the claim for the arrears to a collection agency. The defaulting employer is notified of the referral.

29. There were several telephone conversations between Mr. Boyd and Mr. Scott concerning the company's default in the payment of its dues to the benefit funds. Mr. Boyd did not agree with the fine which he understood the union to have imposed upon the arrears that the company owed to the benefit plans. At that stage Mr. Boyd was unaware that the benefit plans are a separate legal persona from the union and under only the partial control of the union. He suggested to Mr. Scott that the electrical industry in Ottawa was going through a difficult time and that the union should be helping contractors, such as Bytown, rather than putting obstructions in their way, like the penalties which the company was being required to pay. In Mr. Boyd's words, Mr. Scott did not say very much, remaining pretty cool throughout. He replied merely that Bytown owed the money and it should pay it. Mr. Boyd was furious. He had seen the company through an extremely difficult period, he himself had had a heart attack during that period, the company had battled to make payment of part of the arrears it owed and,

in Mr. Boyd's view, it was making a sincere and admirable effort to meet its obligations, and the response he got was terse and unsympathetic. He swore at Mr. Scott, although he denies that he said he would decertify the union, and he hung up the phone.

30. Later telephone conversations between Mr. Boyd and Mr. Scott took much the same form. Mr. Boyd sought sympathy and understanding for the company's plight and recognition of its honest effort to pay the arrears and, in Mr. Boyd's view, all he got from Mr. Scott was cold indifference and a request that the company make payment of the arrears and the penalties. Mr. Boyd would lose his temper, swear at Mr. Scott and slam down the phone. Mr. Scott claims that Mr. Boyd repeatedly said he would decertify the union, or he would get rid of the union, but Mr. Boyd denies ever having said that, even in the heat of the moment.

31. In about mid-December 1994 Mr. Boyd changed his tactic with Mr. Scott. Instead of asking to be excused payment of the penalties due to the benefit funds, he asked for a grace period to make payment. He found Mr. Scott to be accommodating. Mr. Scott suggested a meeting between them to discuss a method for making the payments which the benefit plans administrators had demanded. They agreed to meet.

32. A meeting took place between Mr. Scott and Mr. Boyd in Mr. Scott's office to discuss the company's tardiness in making its remittance payments and to consider how the outstanding penalties could be paid. Mr. Boyd explained that he did not have an administrative assistant and that he was not himself adept at paperwork and that he needed some indulgence from the union. Mr. Scott explained that he could not recommend any indulgence from the trustees as regards the assessed penalties to be paid by Bytown in respect of the remittance arrears. He reiterated that Mr. Boyd should not have ignored the letters of demand because that made it difficult to persuade the trustees to show some leniency as regards the penalty assessment. Mr. Scott recalls that Mr. Boyd repeated a comment he had made earlier that he filed the letters demanding Bytown's remittances in the garbage. Although Mr. Boyd denies having said that, we accept Mr. Scott's evidence as the more probable.

33. At the meeting Mr. Boyd suggested that the role of the union should be to try to assist businesses, like Bytown, to stay in business and to keep the union's members in employment, rather than to impose such heavy penalties on defaulting employers that they are obliged to close down, with everyone losing their jobs. Mr. Boyd said that the company could not pay the colossal penalty that the union had imposed, and he asked Mr. Scott if he could find a job for him when the company had shut down after paying the penalty claimed by the union. Mr. Scott explained that the claimant was not the union, but the Board of Trustees of the benefit plans of the Electrical Industry of Ottawa. He clarified that the trustees were made up of representatives of the union and of the contractors in Ottawa. Mr. Boyd had not been aware of that until then. He had assumed that the trustees were wholly appointed by the union.

34. Mr. Scott advised Mr. Boyd that he could not keep granting indulgences to the company and that Mr. Boyd had to get the company's paperwork in order so that the monthly remittance sheets were completed and sent each month to the benefit plans administrators before there was any talk of reducing the arrear penalties. Mr. Boyd then grew extremely angry and hostile. He said he would sooner close his business than pay the \$29,000 plus figure in penalties. He said he would close the business and start a new one non-union. Mr. Scott told him that that was not possible and that the union would pursue the new company and make it a union shop. Mr. Boyd then shouted and he threatened Mr. Scott that if the company was not given a break and if the union did not get off his back, he would decertify the union and go non-union. Mr. Scott responded by advising Mr. Boyd that he could not simply do that. He said that it was easier to get a divorce than to get away from the union. Mr. Boyd admits to losing his temper at that meeting, although he denies threatening to decertify the union. He

says that he was thinking of the company's possible bankruptcy and the consequences that would flow from that, and not about decertifying the union. He claims to have said that he would close his company and work for a non-union company. He adds that he said that, if the company was bankrupted by the union, he would go and work non-union and he would make it his life-long work and his mission to build up the non-union company to the detriment of the union. The meeting ended with Mr. Boyd, in a high state of irritation and annoyance, abruptly getting up and walking out.

35. We find, for reasons which follow in our assessment of the evidence, that Mr. Scott's version of their meeting is the more probable. We conclude that Mr. Boyd threatened to decertify the union.

36. There was evidence of a telephone conversation between Mr. Boyd and Mr. Scott in about February or March 1995, some weeks prior to Mr. Bradley being laid off. Mr. Boyd was on a job site where Mr. Bradley and Mr. Arsenault were working together. Mr. Boyd was using his cell phone. Mr. Scott was in the union's office in Ottawa. Mr. Arsenault and Mr. Bradley overheard Mr. Boyd's side of the conversation. There was not much surrounding noise to obscure their hearing. Mr. Bradley claims that Mr. Boyd was angry that penalties had been imposed by the union on the arrear contributions due by the company to the union's benefit funds. When it became clear that Mr. Scott was not willing simply to waive the penalties, Mr. Boyd grew extremely angry and threatened to decertify the union and to ensure that his company would go "non-union". Mr. Scott confirms Mr. Bradley's version. Mr. Boyd admits to being extremely angry, but he denies making any threat to de-certify the union. Mr. Arsenault admits that he heard Mr. Boyd's conversation sufficiently to determine that he was displeased with the amount of the fine against the company, but he denies hearing anything more, particularly not any threat by Mr. Boyd. Mr. Arsenault heard the fine mentioned and he gathered that the union was not relenting on its demand for payment. He surmised that the amount was large. He says that he did not know then that the amount was about \$30,000. He determined that later, after he had brought the termination application and his counsel showed him a document reflecting the amount.

37. As above, we prefer Mr. Scott's version of what was said between him and Mr. Boyd. We find that Mr. Boyd repeated his threat to decertify the union.

38. After the telephone conversation Bytown was put onto the Electrical Industry's collections list and the benefit plan's claims against Bytown were referred to a collection agency. A letter of demand was sent to the company on April 3, 1995 advising it thereof.

39. The Board of Trustees of the benefit plans of the Electrical Industry of Ottawa consists of 8 persons, 4 elected by the union and 4 by contractors. Mr. Scott is one of the 4 union appointed trustees. Although Mr. Scott has some influence over the other trustees, he cannot act in their stead and hence he cannot compromise claims they have without their prior approval. That is why the compromise of the trustees' claim against Bytown could be made only at a meeting of the trustees.

40. On April 5, 1995 Mr. Boyd was invited to attend a meeting with the Board of Trustees for the Electrical Industry of Ottawa at the offices of the administrators of the benefit funds, Coughlin & Associates. The company was seriously in arrears in respect of the penalties due by that stage and the trustees decided to hold a meeting to see if some arrangement could be made to overcome the problem. At that stage the company owed \$29,829.93 in late penalty charges.

41. The meeting occurred on April 24, 1995 at 5:00 p.m. That was the day on which Mr. Arsenault first consulted his lawyers to bring the termination application. Mr. Boyd attended the meeting with his counsel. He agreed that he owed the penalties and some negotiation ensued as to what amount the company could afford and what the trustees would accept in respect of the accumulated penalties. The result was a considerable reduction in the assessed penalty. The parties signed a written

agreement of settlement in which Bytown undertook to pay the agreed amount forthwith. Mr. Boyd paid the agreed amount of about \$4,000 by cheque that evening.

42. Mr. Arsenault worked on various jobs with Mr. Bradley over a period of about 2 years before Mr. Bradley was laid off on March 31, 1995.

43. Mr. Arsenault is, by all accounts and from our impression of him, a mild-mannered, subdued and reticent man. He lives in Perth, although he works for the company in Ottawa. He has been a member of the union since 1980. He has been employed by Bytown since 1992. He is the only non-owner now working for the company.

44. Bytown did not employ many electricians. For most of the period relevant to this case it employed 4 employees. They were in the company's employment throughout its most difficult financial circumstances, until the early part of 1995, when three of them were laid off, the last being Mr. Bradley who was laid off at the end of March 1995, shortly before Mr. Arsenault made his termination application. By then he was the only employee of the company.

45. Mr. Bradley claims that shortly prior to his being laid-off, when he was asked to decertify the union by Mr. Boyd, he was given the assurance that he would have employment with Bytown and that, other than the loss of union benefits which he would have to arrange himself, his terms and conditions of employment would remain substantially similar. According to Mr. Bradley, Mr. Boyd was confident that he could guarantee him employment in Bytown because he felt that the contracts he was bidding unsuccessfully on could be secured if he were not obliged to bid at union rates. However, according to Mr. Bradley, if the company did not go non-union then he and Mr. Arsenault would have to be laid off like the other employees who had been laid off previously. Mr. Boyd and Mr. Arsenault deny the allegation. However, for reasons which follow in our assessment of the evidence, we accept that Mr. Boyd expressly requested Mr. Bradley and Mr. Arsenault to bring an application to decertify the union.

46. Mr. Bradley was laid off on March 31, 1995. Mr. Bradley claims that he was laid off earlier and that he sat at home for the month of March 1995, but that is unlikely. We think he is mistaken as to the date of his lay-off. He was away for one week during March, but he was laid off only on March 31, 1995, as attested to by Mr. Boyd. Mr. Bradley claims that Mr. Boyd undertook to recall him once the union had been decertified. He claims that once laid off he spoke to Mr. Boyd on a few occasions and he was told to "sit tight" until the decertification application was through, after which he would be recalled to work. Mr. Bradley claims that Mr. Boyd promised him renovation work on a high rise parking garage in Ottawa, the Britannia project, once the decertification application was successful. Having regard to the evidence referred to below, we conclude that some assurance of re-employment was given to Mr. Bradley by Mr. Boyd. In all likelihood the promise of re-employment was linked to the success of the decertification application of Mr. Arsenault.

47. Upon his lay-off, Mr. Bradley had to pay a reinstatement fee to the union to re-affirm his union membership and his entitlement to be on the out-of-work lists. The fee was due because the company was in arrears with the payment of his union dues. It is payable if remittances are 3 months or more in arrears. Mr. Nugent, formerly an employee of the company laid off prior to Mr. Bradley, also had to pay a reinstatement fee.

48. Mr. Arsenault says that he began to think of terminating the union's bargaining rights about 8 or 9 months before he actually contacted a lawyer to assist him. He reasoned that he did not see a future for himself and his family remaining in the union because the economy was such that he thought his work would be more secure if he worked non-union. With the downturn in the economy, Bytown was getting less work and Mr. Arsenault says that he attributed that deterioration in the company's

circumstances to the fact that it had to comply with the union's rates of pay when bidding on contracts. He claims never to have discussed these thoughts with any other person, nor to have heard them even suggested by any other person. They were conclusions which he had arrived at from his own independent observation and analysis of the situation. At one point he suggested that, had Mr. Boyd been opposed to the decertification application, he would still have proceeded with it. When the question was put to him a second time, he conceded that he probably would not have.

49. Mr. Arsenault claims that at no stage did he discuss his decertification intentions with his fellow employees. He was aware, though, that he needed a majority of employees to sign a petition applying for decertification of the union. Nonetheless he did not discuss his plan with anyone, he merely left his plan in abeyance until he was the only employee left. His explanation for not discussing the decertification application with his fellow employees before they were laid off is that he did not want to get them involved. He adds that had the lay-offs not occurred he would not have gone ahead with the termination application. He can give no explanation as to why he felt willing to bring the decertification application when he was the only employee, and not otherwise.

50. Mr. Arsenault claims that the lay-offs which occurred shortly before he made the decertification application had no influence whatsoever upon his decision to bring the application. Similarly he claims that no-one threatened him, nor was he induced in any manner to bring the application. He was given no assurance, nor any promise as regards his terms or conditions of employment in the event of his termination application being successful. He says that he had no idea as to whether the company would maintain his wage rate, or any of his other terms or conditions of employment when he brought the application. He had discussed nothing of that with Mr. Boyd, or with anyone else. He trusted that he would be better off working at Bytown than not working at all, which he saw to be the alternative to decertification of the union, even if his wage rate were to be reduced. He mentioned that he was not concerned by the prospect of the loss of his union benefits because his wife worked and her benefits were generally superior to those that he obtained through the union.

51. Having made the decision to apply to terminate the union's bargaining rights in Bytown, in April 1995, Mr. Arsenault contacted his own lawyer in Perth. He was referred to a law firm specializing in labour relations matters and he consulted them in respect of this application. He had two meetings with his lawyer, the first on April 24, 1995, and the second on April 26, 1995, when he signed the termination petition. The termination application was launched on Mr. Arsenault's behalf by his lawyers on April 29, 1995.

52. We do not accept Mr. Arsenault's account of his thought process leading to his deciding to apply for the union's decertification. For reasons which follow, we conclude that his explanation of his determination to wait until he was the only employee before making the application is not credible. We further conclude that the probabilities favour the finding that Mr. Arsenault's decision to apply for the termination of the union's bargaining rights was founded in the request made of him and Mr. Bradley by Mr. Boyd.

53. After Mr. Bradley was laid off, he believed that he would be recalled to work relatively quickly. He expected to be recalled to work on the parking garage renovation which Mr. Boyd had promised him. That work was anticipated in the summer. Mr. Bradley would phone Mr. Boyd periodically to check if the company was yet in a position to recall him. Mr. Bradley says that each time Mr. Boyd told him to sit tight and to wait for the outcome of the decertification application. Mr. Boyd said that he would not be taking on any employees while the decertification application was pending before the Board, and that Mr. Bradley should await its outcome.

54. Mr. Bradley and Mr. Boyd spoke on the telephone on July 21, 1995. Mr. Bradley asked Mr. Boyd whether the company had secured the contract for the Britannia job, which Mr. Boyd confirmed.

Mr. Bradley then asked if he could come back to work, to which, according to Mr. Bradley, Mr. Boyd replied that he could not because the decertification application was still pending. Instead Mr. Boyd had taken on a new working shareholder, someone who had previously worked as an apprentice electrician for the company when Mr. Bradley was there, who would be doing the garage job. Mr. Boyd explained to Mr. Bradley that he could not lay-off a co-owner in order to recall him. Mr. Bradley says that Mr. Boyd then asked him if he were still interested in working for the company if it were non-union and Mr. Bradley replied affirmatively. Mr. Boyd then told him once again to sit tight (in expectation of recall) because it would not be long before the hearing was over.

55. Mr. Boyd's version of the conversation gives credence to Mr. Bradley's version. He admits to asking Mr. Bradley if he had heard that Mr. Arsenault had brought a decertification application before the Board. In his evidence in chief, he said that he told Mr. Bradley to sit tight depending upon the decertification application because, if it were successful, Mr. Bradley could get back working. That directly confirms Mr. Bradley's evidence. However, under cross-examination Mr. Boyd said exactly the opposite. He said that he told Mr. Bradley that if Bytown continued to be a 'union' company (i.e. subject to the collective agreement) then there would be a position for Mr. Bradley in the company. In other words, if Mr. Arsenault's decertification application were unsuccessful then there would be a position for Mr. Bradley. Mr. Boyd said under cross-examination that there would not have been a position for Mr. Bradley in the company if the decertification application were successful because he knew that Mr. Bradley would never work non-union. He can give no explanation as to how he would have known that. He contended throughout the hearing that he had never discussed with Mr. Bradley whether or not he would be willing to work non-union. He says that he never spoke to Mr. Bradley at any time as to whether he preferred to work union or non-union. Instead, says Mr. Boyd, he picked up by observing Mr. Bradley and knowing him for over a year that Mr. Bradley was not someone who would be willing to work non-union. Notwithstanding the obvious contradictions and anomalies in Mr. Boyd's evidence, his raising the issue of Mr. Arsenault's decertification application with Mr. Bradley and discussing whether or not a position would be available to Mr. Bradley depending upon the outcome of that application is consistent with Mr. Bradley's contention of prior discussions between them of a decertification application.

56. Mr. Boyd's informing Mr. Bradley that he was not to work on the Britannia parking garage project appears to have been a turning point for Mr. Bradley. He gave up hope of being recalled to work at Bytown and, from then on, he seems to have concluded that, if he were to get work, he would have to do so through the union hiring hall.

57. On July 26, 1995, the union's counsel made allegations against Mr. Boyd which plainly relied upon information obtained from Mr. Bradley, who was referred to by name in the amending pleadings. The union gave notice of its intention to amend its response to the decertification application by relying upon the allegations of Mr. Bradley which had newly come to hand.

58. That night, in response to the union's counsel's notice to amend pleadings, on the eve of the first hearing of these applications, Mr. Boyd telephoned Mr. Bradley to inquire if he had been speaking to the union and if he would be testifying on behalf of the union. Mr. Bradley says that he lied by saying that he would not be testifying for the union. Mr. Bradley claims that Mr. Boyd then said, "remember, I never said that you should decertify the union". Mr. Boyd claims that Mr. Bradley said that he was testifying because he had no choice, he needed work through the union and he had to testify. In his evidence in chief Mr. Boyd said that he never discussed the content of the union's counsel's notice to amend pleadings which contained Mr. Bradley's allegations against Mr. Boyd. Under cross-examination, Mr. Boyd said that he told Mr. Bradley that he never said anything about decertifying the union to him or to Mr. Arsenault. This latter evidence corroborates Mr. Bradley's version of the telephone conversation. It is also extremely unlikely that Mr. Boyd would not have discussed the

content of the union's counsel's notice to amend pleadings with Mr. Bradley because he called directly following his being informed thereof by his own counsel and he was, we conclude, shocked by what he saw to be Mr. Bradley's betrayal, particularly when, until then, Mr. Bradley had phoned him regularly to talk of the prospect of his being recalled to work for Bytown and they were on good terms.

59. The first day of hearing occurred on the next day. Both Mr. Bradley and Mr. Boyd were in attendance. During a break in the proceedings, when Mr. Boyd and Mr. Bradley were alone in the hearing room, a conversation occurred between them. Mr. Boyd claims that Mr. Bradley, apparently troubled by the silence between them, volunteered to him that he had no choice (but to testify for the union) because, in his words, he had only \$2 in his pocket. Mr. Bradley entirely denies the incident. We have no reason to doubt Mr. Boyd's account. The company's counsel suggested that Mr. Bradley's unsolicited comments showed that, in testifying, he was acting under some economic duress from the union. We do not accept that explanation. His gratuitous comment appears to have been more a function of embarrassment at having turned on Mr. Boyd and a somewhat gauche attempt to justify his perceived disloyalty.

60. Mr. Bradley went onto the union's out of work list when he was laid off by Bytown. The union keeps one list, but there is a notation beside the names of those on the list who are willing to work out of town. The union has an arrangement with other locals that if they do not have anyone available to work they notify locals which can send electricians from their out of work lists to take the available work. Mr. Bradley put his name forward for both local and Ontario-wide work. The list is computerized in respect of in-town and out-of-town work. Everyone on the list is available for in-town work, only some are available for out-of-town work. When a job comes up the person at the top of the list gets the offer of work. If s/he declines it, it goes to the next person on the list, and so on. So, although there is only one list, the calculation of eligibility to receive work is separated as between those who have volunteered only for in-town work and those who have volunteered for out-of-town work.

61. Mr. Boyd took on a partner to perform the work he originally intended to give to Mr. Bradley on the Britannia parking lot job, with effect from July 31, 1995. No new employees were taken on and Mr. Arseneault remained the only employee from March 31, 1995, when Mr. Bradley was laid-off.

62. The principal attack upon the credibility of Mr. Bradley's evidence came from his estranged wife, Patricia Bradley. She testified for the company. Although married since 1986, they separated in January 1995. We restricted evidence of the causes of the marital break-up as much as possible and we will refer to that evidence only to the extent relevant to the evidentiary issues in this case.

63. Mrs. Bradley was reasonably well acquainted with Mr. Boyd prior to testifying on behalf of the company. He had been to the Bradley's home on more than one occasion and Mr. Bradley had introduced him to her.

64. Mr. Boyd and Mrs. Bradley claim that they met by pure chance on October 10, 1995 in a shopping centre. By that stage Mr. Boyd was well aware that Mr. Bradley had elected to testify against him. Mrs. Bradley was sitting having a snack. Mr. Boyd walked through the mall beside the seating area where Mrs. Bradley was sitting and Mrs. Bradley was content that he appeared not to have seen her. She says that she did not want to speak to him because she was worried that he might have heard nasty things about her from Mr. Bradley and she thought she might be embarrassed to speak to him. Mr. Boyd walked past where Mrs. Bradley was sitting. He says that he recognized her as being Mr. Bradley's wife, but he could not remember her name. He decided to speak to her and he returned to the coffee seating area and joined her. He apologized for having forgotten her name and they spoke and he drank coffee while they sat together. Mr. Boyd asked if she was still in touch with Mr. Bradley and she

replied that she had spoken to him several times over the previous summer. Mr. Boyd asked her if Mr. Bradley had ever discussed him (Mr. Boyd) asking him (Mr. Bradley) to decertify the union. Mrs. Bradley says that she then told Mr. Boyd that Mr. Bradley had said that he had to testify for the union if he wanted to get work. The conversation between Mr. Boyd and Mrs. Bradley was limited because both were pressed for time. Mr. Boyd asked Mrs. Bradley if he could contact her again. She agreed and he noted her telephone number. Mr. Boyd then informed his counsel of what Mrs. Bradley had told him and Mr. Boyd then phoned Mrs. Bradley and asked her if she were willing to meet again to discuss the matter further. She agreed.

65. Mr. Boyd phoned Mrs. Bradley the next day and they met again at the same place. This time the meeting included the company's counsel. A fuller conversation occurred which led ultimately to Mrs. Bradley willingly testifying for the company. She says that she felt that Mr. Boyd had been good to her estranged husband and she did not like to see him give false testimony against Mr. Boyd. Her decision to testify (and to lose income for doing so) was undertaken entirely for altruistic reasons, in that she could not bear to have a falsehood raised against the company and Mr. Boyd by her recalcitrant husband. She claims that she did not intend to get back at her husband by testifying against him, she did so only because she did not like him to tell a lie.

66. Mr. and Mrs. Bradley had some conversations after he was laid off by Bytown. There is considerable conflict between their two versions of what was said. In general, Mrs. Bradley was more believable, although she tended to exaggerate and embellish her evidence in order to discredit her estranged husband. She was plainly angry with him (in his words, she has a "lot of vengeance" against him) and her evidence needs to be tempered by discounting her manifest sense of outrage at his conduct in relation to her. Mr. Bradley had a poorer recollection of their conversations and, besides falsely suggesting at times that he never discussed anything to do with Bytown and the union with Mrs. Bradley, he tended to suggest that he possessed a more coherent attitude at that time than was probably the case. In our assessment of the evidence, at that time there was considerable ambivalence in Mr. Bradley's thinking - his loyalty was divided between wanting to resume work at Bytown and wanting to get a job through the union's intercession. At the hearing Mr. Bradley sought to appear less interested in the prospect of re-employment at Bytown than he no doubt was. In fact he went so far as to suggest that he had decided not to work non-union at the time of his lay-off, and he speculates that that is the reason he was not readily recalled by Mr. Boyd. Mr. Bradley wanted us to believe that, relatively soon after leaving Bytown, he had firmly rejected any thought of working again for Bytown because he did not want to work non-union. The evidence does not support that view. On the contrary, it seems quite clear that Mr. Bradley was eager and expectant to return to work at Bytown, at least until July 21, 1995. Mr. Bradley was probably not as opposed to Mr. Arsenault's decertification application as he sought to appear at the hearing. He was relying upon the assurances of recall given by Mr. Boyd. Had he been summoned back to work by Mr. Boyd, whether Bytown was union or non-union, from our impression of Mr. Bradley, he would not have hesitated to accept the recall. But, when he saw that that was not going to happen, his dependence upon, and hence his loyalty to, the union grew and he became more willing to disclose the detail of the conversations he had had, and the arrangements he had made, with Mr. Boyd. Like Mrs. Bradley's evidence, his evidence needs to be approached with care, so as to avoid its *ex post facto* self-justifications, fabrications and embellishments.

67. What seems clear is that at the time Mr. Bradley was laid off Mr. Boyd intended to recall him for the Britannia parking lot renovation anticipated to occur in the summer of 1995. We conclude that Mr. Boyd expected the decertification application to have been successful by then. When it became clear that the decertification application would not be granted quickly, and Mr. Boyd did not want to change the status quo within the company until the application was concluded, he did not recall Mr. Bradley, nor did he take on any additional employees. Instead he took on an additional working shareholder in the company. The size of the work force increased, but the bargaining unit continued to

consist only of Mr. Arsenault. Once Mr. Bradley knew that Mr. Boyd had taken on a new working partner instead of recalling him to work on the parking lot job, he realized that he needed to rely only upon the union to find work for him. It was then that he became a willing participant on behalf of the union in these proceedings.

68. While on lay-off and on the union's out of work lists, Mr. Bradley inquired periodically of Mr. Scott whether there was any work for him. The union applied its out of work list in strict order of placement. There was little movement on the internal (Ottawa) list, but there was some greater movement on the shorter external, Ontario-wide list. Mr. Scott informed Mr. Bradley that there might be some work for him out of town. Mr. Scott had been told by the business manager of the local in Sault Ste. Marie of a big job there later in the summer of 1995. No promise of work was made to Mr. Bradley by Mr. Scott. He was merely told what work might come up. Mr. Scott says that he frequently knows up to 6 or 7 months before a job becomes available that it is likely to become available. He was aware that there would be jobs in Sudbury, Windsor and Thunder Bay in the summer '95 and he may well have mentioned that possibility to Mr. Bradley when he went onto the out-of-work list.

69. We now consider Mrs. Bradley's evidence. Mr. and Mrs. Bradley did spend quite a lot of time together during the summer of '95 discussing matters of concern to Mr. Bradley, and probably to Mrs. Bradley too. Mrs. Bradley claims that Mr. Bradley told her that Mr. Scott had promised work to him if he testified against Bytown. Mr. Bradley denies having said that. Mr. Scott denies that any such promise was made. Mrs. Bradley goes further and claims that Mr. Bradley told her that Mr. Scott had promised preference to Mr. Bradley in respect of work out of town if he testified for the union. Mr. Bradley denies having said that and we find that there is no truth in the allegation. As will be clear from Mr. Scott's evidence (described below), he never made that promise, nor was his comment to Mr. Bradley that he might get some work in Sault Ste. Marie in any manner related to Mr. Bradley giving testimony for the union. Mr. Bradley might well have said to Mrs. Bradley that he had to testify for the union if he was to get work out of town. That may have been his understanding of his predicament, or more likely it was his justification to Mrs. Bradley for turning against Mr. Boyd, but it was not based on anything said to him, or done, by Mr. Scott. It is most unlikely that Mr. Bradley would have said that Mr. Scott had promised him preference in selection for out-of-town work because there was no basis for him saying that. He was never given that promise, nor was he subsequently given preference when he obtained out-of-town work through the union. During Mr. Bradley's period of 9 months out of work during 1995, he obtained only 4 weeks work, and that in Sault Ste. Marie. He got the work when he reached the top of the out-of-work list. There was previously a large referral of electricians on the out-of-work list to a job in Windsor and there were other referrals by the union during the summer of 1995 to Thunder Bay, St. Catharines, Barrie and Sudbury, but Mr. Bradley did not benefit from those referrals because he was too low down on the list. He benefited only in the ordinary course when he moved to the top of the list. Seventy five men were dispatched to jobs through the union ahead of Mr. Bradley from the time he was laid off until he was assigned work in September 1995.

70. The above assignments of work to those on the out-of-work list occurred despite Mr. Scott's entitlement, as Business Manager, to exercise his discretion in the manner he considers most suitable in respect of the assignment of work to those on the out-of-work list. He could, he says, have put Mr. Bradley to the top of the list. That was within his authority. He did not. He says that occasionally he will make exceptions on humanitarian grounds to move a particular person up the list, but that was not done in Mr. Bradley's case. He got no preference whatsoever.

71. In one particular conversation Mr. Bradley said to Mrs. Bradley that he felt he was between "a rock and a hard place". He says that he meant by this comment that he could not decide whether to go non-union with Bytown, or to keep his association with the union and hence be available to obtain work from the union's hiring hall.

72. Mrs. Bradley claims that in one conversation Mr. Bradley told her that Mr. Scott had told him that if he did not testify in the union's favour in these proceedings he would never again get union work or that he would not get work for a very long time. Mr. Bradley denies having said that, and he denies that Mr. Scott ever said that to him. In respect of this allegation Mr. Scott says that when he became aware of the conversations between Mr. Bradley and Mr. Boyd he explained to Mr. Bradley that the union would expect him to give testimony of those conversations and that it would subpoena him to do so, but Mr. Bradley was not coerced or threatened to testify. Mr. Bradley agreed to give testimony, which he then did under subpoena.

73. We accept Mr. Scott's explanation. Mr. Bradley was no doubt ambivalent about coming out openly against Mr. Boyd. It was one thing to inform the union of what he had heard Mr. Boyd to say, it was another thing altogether to give testimony of it and, in all likelihood, destroy any prospect he might have had of working again at Bytown. His reticence to testify, communicated to Mrs. Bradley, may well have included justification for why he had chosen to do so. She was acquainted with Mr. Boyd and she believed he had been good to her husband. She plainly did not support Mr. Bradley's decision to side with the union against Mr. Boyd. No doubt she must have criticized the choice he had decided to make. He explained to her that, in his opinion, he had to testify otherwise he would never get union work again. That threat was never made to him; it appears to have been something he invented to justify to Mrs. Bradley his choosing to side with the union rather than with Mr. Boyd or something he feared, but not because of anything said or done by Mr. Scott or the union. Mr. Bradley had made that election because he saw the prospect of getting work to be better with the union than with Bytown. He was not promised any inducement, nor given any threat. He made the choice himself, difficult though it was for him to cut his ties with Bytown.

74. Mr. Bradley was given an opportunity by the union to work in Sault Ste. Marie. He was dispatched on September 25, 1995. Mr. Bradley told Mrs. Bradley that he had got a job through the union and that he would probably be working in Windsor and Thunder Bay. He made no mention of Sault Ste. Marie. The reason he gives for lying to her about the location of his work was that he did not want her to bother him while he was away in Sault Ste. Marie.

75. Mrs. Bradley makes a further allegation against Mr. Bradley. She claims that he said to her that he had to lie about his conversations with Mr. Boyd and say whatever Mr. Scott wanted him to say. Mr. Bradley denied that. We do not believe this part of Mrs. Bradley's testimony. It seems to have been her own interpolation, an addition she made to add support to Bytown's cause. Our conclusion is that Mr. Bradley may have exaggerated the frequency of Mr. Boyd's conversations with him concerning the union, and he may have embellished upon what was said here and there, but his evidence is broadly consistent with the circumstantial evidence in this case and Mr. Boyd's version of events.

76. Mrs. Bradley claims that Mr. Bradley told her that Mr. Scott did not like Mr. Boyd and that he had a personal vendetta against him. Mr. Bradley denies that. He says that he mentioned to her that Mr. Scott was always chasing Mr. Boyd for payment of the company's pension and other contributions because Mr. Boyd was usually late with his payments, but he never said that Mr. Scott did not like Mr. Boyd or that Mr. Scott had singled out Mr. Boyd for special harassment. Our impression of the evidence as a whole is that Mr. Scott adopted a thoroughly proper and professional attitude towards Bytown and in no manner did he single out Mr. Boyd. Whatever his feelings for Mr. Boyd, they did not influence the manner in which he dealt with the company. To the extent that there was any rudeness or discourtesy between them, in each instance the belligerence was from Mr. Boyd towards Mr. Scott and not the other way around.

77. Mrs. Bradley claims that during the period of her marriage to Mr. Bradley they would have a drink together each evening and Mr. Bradley would discuss what had happened to him at work that

day. According to her, he had spoken of how much he enjoyed working for Mr. Boyd and, at no stage that she could recall, had he mentioned to her that Mr. Boyd had asked him to de-certify the union. Mr. Bradley says that he never discussed his work with Mrs. Bradley. It is difficult to know where the truth lies in this dispute. In all likelihood there was some discussion between Mr. and Mrs. Bradley when they lived together of what had happened to him at work, but there are problems in her testimony. Although Mr. Bradley says that Mr. Boyd was always talking to the employees of decertifying the union, and that is almost certainly an exaggeration, Mr. Bradley made specific mention of an approach to that effect by Mr. Boyd during about February 1995, after Mr. Bradley had ceased to live with Mrs. Bradley and relatively shortly before he was laid off.

78. Under cross-examination regarding her evidence of her chance encounter with Mr. Boyd at the shopping mall in October 1995, Mrs. Bradley said that she told Mr. Boyd that Mr. Bradley had agreed to testify for Mr. Scott in order to obtain employment. That evidence fits with the probabilities of this case. We are satisfied that Mr. Bradley thought that his work opportunities through the union hiring hall would be adversely affected if he did not testify for the union and that he told Mrs. Bradley that. We are also satisfied that in all likelihood he went no further than that. The probabilities do not support Mrs. Bradley's evidence that he said he would lie, nor that Mr. Scott threatened that he would never work again, nor that he would have great difficulty ever obtaining work again. Those amplifications were Mrs. Bradley's embellishments and fabrications. We have found that the union gave no cause to Mr. Bradley to believe that he would not get work if he did not testify for the union, but we are satisfied that he might well have viewed his own situation in that light and he told Mrs. Bradley thereof.

79. There were some contradictions in Mrs. Bradley's evidence. In the company's pleadings contained in a letter from its counsel to the Board dated October 27, 1995 setting out what Mrs. Bradley's evidence would be, the following is stated: "Mr. Bradley constantly told his wife that he was very happy working with Bytown Electric and that it was a good union shop and further that Bytown Electric was paying its contributions as required to the union." Initially in cross-examination Mrs. Bradley said that she had no recollection of Mr. Bradley having mentioned the payment of its contributions to the union. When the company's counsel's letter of October 27, 1995 was brought to her attention, she recalled that she and her husband had spoken of the company's contributions to the union. She sought to explain her 'error' on the basis that she did not initially understand what was meant by the word 'contribution'. No explanation of its meaning was given prior to her changing her version.

80. Mrs. Bradley was not an impartial, indifferent observer. She is bitterly angry with Mr. Bradley and she came across as extremely sympathetic to Mr. Boyd's situation. She testified without a subpoena. She lost pay from her employer by testifying and she took two days leave for the purpose of testifying. She had made no arrangements to be compensated for her time at the hearing. In our view, she was a biased witness. She could not make reasonable concessions when she was questioned and she stuck rigidly to positions which were highly improbable in her attack upon her estranged husband and her defence of Mr. Boyd. There was a grain of truth in much of what she said, but she tended to embellish and exaggerate what she says Mr. Bradley told her, with the result that her eventual testimony was not believable. It was from her that the company derived its theory of a conspiracy between Mr. Scott and Mr. Bradley, but that theory was not seriously advanced at the hearing. Bytown's counsel, quite reasonably, did not even put the notion to Mr. Scott as a possibility for him to respond to because, we suspect, it appeared so obviously improbable. At worst for the union's case, Mrs. Bradley can say that Mr. Bradley was reluctant to testify for the union and he felt obliged to do so if he was to get work through the hiring hall. Mr. Bradley was not in any manner preferred as a consequence of his testifying for the union, nor would he have been prejudiced in his work opportunities had he not testified for the union.

81. Mr. Boyd would be the first to admit that he speaks his mind, he does not mince his words and he expresses his likes and dislikes unashamedly. His counsel put that version of Mr. Boyd's personality to Mr. Bradley in cross-examination and Mr. Bradley readily admitted that Mr. Boyd was hot-headed, easily angered and outspoken. That view of Mr. Boyd is confirmed also in the company's statement of case and its written submissions prior to the hearing. However, notwithstanding what appeared to be common cause before the hearing, and notwithstanding the version put by Bytown's counsel to Mr. Bradley, and quite unconvincingly, Mr. Boyd and Mr. Arsenault together sought to suggest that Mr. Boyd had an entirely different set of personality traits - that he was quiet, restrained and phlegmatic. The circumstantial evidence also supports the opposite conclusion - that advanced by Mr. Bradley and Mr. Scott - that Mr. Boyd was robust, direct and relatively unrestrained in the expression of his views. His company was under enormous financial pressure. In general the company was subject to union rates and union terms and conditions of employment. It was finding that it could not compete effectively with the non-union firms when it tendered for work. It was being undercut in its bids. Non-union firms were securing contracts which the company could not compete for because of the union rates it was obliged to pay. Besides that general context, the company had a further difficulty. It had fallen into arrears in the payment of the remittances and contributions it owed to the union's benefit funds. It had failed to pay the amounts it owed and penalties and fines had been imposed by the union, adding to the company's liability. A high rate of interest was being charged on the arrear amounts. The debt owing by the company to the union was accumulating. Mr. Boyd was doing his best to get the company's finances in order. He needed some generosity from the union. He needed some understanding of the company's difficult trading circumstances. Whenever he spoke to Mr. Scott he felt that he was getting no sympathy at all, no appreciation for the efforts he was making to resume payment of the monthly dues to the union, and to pay the arrears. He felt, in those circumstances, the union was acting unfairly to add penalties and a high rate of interest onto the arrears. He felt the union was being grossly unreasonable. He was under great stress and he believed the union, personified by Mr. Scott, to be the principal cause of his, and the company's, difficulties. His understanding was that, just at the time that the company was beginning to recover from its worst period, the imposition of the penalties on the arrears due by Bytown to the benefit plans, entailed the bankruptcy of the company. Mr. Boyd saw the union's demands as being a direct threat to the future viability of the company.

82. Mr. Boyd admitted in evidence that he discussed a divorce with the union, when he met Mr. Scott in his office at the union's premises. He claims that Mr. Scott said to him it would be more difficult to get rid of the union than to get a divorce. The likely context in which that comment would have been made was the one of which Mr. Scott testified, viz. in response to Mr. Boyd's comment that he would get rid of the union in his company. Mr. Boyd's version is that he said he would go and work for a non-union company, to which Mr. Scott replied that the union would follow him there and that getting away from the union was more difficult than obtaining a divorce. That is not an improbable version of what was said, but it is seriously undermined by other evidence of Mr. Boyd. He testified that the thought of working in a non-union environment did not enter his head until after he received Mr. Arsenault's decertification application. That evidence is not consistent with his own version of his discussion with Mr. Scott. It is also not consistent with other evidence he gave. He said, when asked if he would prefer to work non-union, that he did not know a company today that would not prefer to work non-union. That reply flies in the face of his other evidence that he had not considered the possibility of the company working non-union prior to Mr. Arsenault serving a copy of his decertification application on the company at the end of May 1995.

83. There is much to suggest that Mr. Boyd had a close working relationship with his employees. He socialized with them and he invited them and their wives to a weekend barbecue and other events, which suggest a high level of comfort between them. Mr. Arsenault admits to being a good friend of

Mr. Boyd, and to confiding personal information in him. Mr. Boyd admitted to having close relationships with his staff. He said it was not uncommon for members of staff to confide in him as regards personal problems they were having.

84. Mr. Boyd admits that he discussed Bytown's contract bids with his employees and he would, he says, if asked by an employee, inform him if a bid had been successful. In these circumstances, given the relatively easy and casual association between Mr. Boyd and his journeymen, given also his natural volubility, it is inconceivable that Mr. Boyd would not have discussed his belief that the union was the cause of Bytown losing contract bids. It is also inconceivable that he would not have revealed his antipathy towards the union and Mr. Scott to his employees. Mr. Bradley says he did so all the time. Despite our reservations regarding the veracity of some of Mr. Bradley's testimony, we are satisfied that in this respect he was telling the truth. Mr. Boyd was furious with the union and Mr. Scott, and he did not restrain himself from expressing his feelings. Mr. Boyd virtually admitted this in his evidence. Only Mr. Arsenault assiduously denied any expression of antipathy by Mr. Boyd about either the union or Mr. Scott. We find that evidence to be incredible. Mr. Arsenault was not being frank with us when he said that he had never heard Mr. Boyd speak in anger against the union. On the contrary, our conclusion is that the climate of antagonism towards the union generated by Mr. Boyd within the company was so extensive and so pervasive that Mr. Arsenault and Mr. Bradley were left in no doubt whatsoever that Mr. Boyd wanted the company to be rid of the union. Not only that, Mr. Boyd had made clear that the very survival of the company, and by implication the survival of Mr. Arsenault's job, depended upon the company being non-union. The call for decertification was patently expressed within the company.

Assessment of the Evidence

85. Mr. Bradley's version of discussions at work fits better with the facts that the company was close-knit with a high level of openness and ease as between the members of management and the electricians and that the company was under considerable financial pressure ostensibly at the instance of the union. (The pressure upon the company was in fact at the instance of the administrators of the electrical industry benefit plans, although Mr. Boyd correctly perceived Mr. Scott, the union's Business Manager, to be the person with influence over the enforcement or waiver of the penalties). Also, Mr. Bradley and Mr. Arsenault would have known that the company was not making the remittance payments it was obliged to make on their behalf because each month they receive a newsletter from the union with their dues receipt. If they receive the newsletter without their dues receipt they know that their employer has not made the remittance payments for them. Mr. Arsenault claims to have planned his decertification application, entirely of his own volition, because he thought that the company would have been more successful in its contract bids if it were non-union. Mr. Boyd admits to having shared the information of the company's bidding endeavours with Bytown's employees. Yet despite that admission, Mr. Arsenault's evidence was that no financial information was shared with him by Mr. Boyd and he decided to decertify the union without any discussion of the impact of decertification upon the company.

86. There are other aspects of Mr. Boyd's evidence which are not credible. He says that the first time the thought dawned on him that Bytown might be better off going non-union was after he received Mr. Arsenault's decertification application. Despite his acknowledgement that he was losing contracts during the company's difficult financial period because he had to bid at union rates, he suggests that the first time the thought of the possible advantages of going non-union entered his mind was when he received the decertification application. We do not believe that testimony. It does not fit with reasonable inferences that can be drawn from the evidence.

87. We do not have evidence that Mr. Boyd actually connived with Mr. Arsenault to initiate the decertification application. That is entirely possible, although that is not our finding. We do accept, though, that Mr. Boyd approached Mr. Bradley and Mr. Arsenault together to initiate a decertification application. Although this allegation was denied by Mr. Boyd and Mr. Arsenault, we accept Mr. Bradley's evidence that the unlawful request was made of him and Mr. Arsenault by Mr. Boyd shortly before Mr. Bradley was laid off. Mr. Bradley did not carry out the request. He did not apply for the union's decertification. We do not have evidence that Mr. Boyd laid off Mr. Bradley because of his failure to bring the decertification application, but not long after Mr. Bradley was laid off, the company engaged a new, working part-owner to perform an electrician's work. We do not find that Mr. Boyd laid off Mr. Bradley because he refused to petition the Board to de-certify the union. However, soon thereafter, when Mr. Arsenault was the only employee left, the application was brought. Mr. Boyd may well have spoken to Mr. Arsenault once Mr. Bradley had been laid off and he might have encouraged him to proceed with the termination application. We do not know that for sure, but the probabilities of him doing so overwhelm the opposite conclusion. Mr. Boyd is a strong and assertive character. Mr. Arsenault is not. He had come to believe that his livelihood, and that of his family, depended upon the goodwill of Mr. Boyd and the success of the company. Mr. Boyd requested Mr. Bradley and Mr. Arsenault to make a decertification application. Mr. Arsenault would have been in no doubt as to what the company expected of him. He must have realized that his contribution to the company's welfare was to de-certify the union as soon as he had the opportunity to do so alone.

88. The union's counsel argued that there is some significance in the date when Mr. Arsenault says he first began to think of decertifying the union. That was long before he took any action, but he says that in about September 1994 the idea began to germinate. The union's counsel draws attention to the fact that the pressure upon Bytown to pay the penalties on the outstanding arrears began in earnest at about the same time. There may be some significance in that coincidence, remote though it is.

89. We do not think that the coincidence of Mr. Arsenault consulting his lawyer on April 24, 1995, and Mr. Boyd meeting with the union's benefit fund trustees on the same day, is a matter of pure chance. The probabilities support the union's argument that Mr. Boyd's encouragement of Mr. Arsenault to bring the termination application coincided with his having to face a meeting at which he anticipated having to pay a substantial fine to the union. He had threatened that if he were obliged to pay the fines and the penalties which had been imposed upon the company by the union's benefit fund trustees, he would take steps to remove the union from the company. Mr. Arsenault's visit to his lawyer on April 24, 1995, followed closely upon that threat.

90. Assessing Mr. Arsenault's evidence as a whole, he made one glaring error concerning the dates of certain jobs. That in itself was not sufficient for us to disbelieve him. But there was much in his evidence which was troubling or unbelievable. We do not believe that he never discussed the union with Mr. Boyd. In the circumstances of what appears to have been a somewhat paternal relationship between Mr. Boyd and Mr. Arsenault, that is most unlikely. Mr. Arsenault admits to discussing family matters and domestic issues of concern to him with Mr. Boyd, yet he denies ever having discussed anything to do with the economic circumstances of Bytown. Mr. Arsenault's selective recollection of the telephone conversation between Mr. Boyd and Mr. Scott (he claims to have heard only part of what Mr. Boyd said) is unreliable. His evidence that he was aware of the need to ensure that a majority of employees signed the termination petition and yet that he never even spoke to any of his fellow employees to determine if they would join him in signing the petition, is improbable. The explanation he gives is that he did not want to get the other employees involved. That makes no sense had he really wanted to decertify the union. He claims to have wanted to decertify the union and to have known that a majority of employees must sign the termination petition, yet he took no action to inquire whether they would sign the petition. At the time he claims first to have thought about applying to decertify the union he had no inkling that his fellow employees would be laid off and that he alone would be left as

an employee in the company. Yet he took no action until that eventuality had occurred. He went further and said that he would not have brought the termination application had the other electricians not been laid off. It was only because he was alone - the company's only employee - that he made the application. He can give no explanation for why that should make any difference. In our view, it should make no difference. We have come to the conclusion that the only reason it did make a difference was that Mr. Arsenault was then answerable wholly to Mr. Boyd, and he felt that he could no longer resist his exhortation to be rid of the union. Mr. Arsenault was then vulnerable to Mr. Boyd's prodding in a manner different from when there were other, somewhat more independently-minded, employees working with him.

91. Mr. Arsenault came across as a dutiful and obedient employee. His evidence that he did not discuss the implications of decertifying the union with Mr. Boyd is not convincing. When asked of this in cross-examination he somewhat contradicted himself. He was so eager to show that he had acted without prompting from Mr. Boyd, that at one point he suggested that, had Mr. Boyd been opposed to the decertification application, he would still have proceeded with it. When the question was put to him a second time, he conceded that he probably would not have. If he were to be believed, he did not discuss a matter which was absolutely central to the company's mode of business. It tenders as a union shop on all its bids; its business projection is currently calculated on the basis of the rates and terms prescribed in the provincial collective agreement for the electrical industry; it has functioned as a union shop for over 10 years. Mr. Arsenault wants us to believe that he would have taken a decision which so fundamentally affects the company's business without discussing it with the company's principal, Mr. Boyd. Given the relative conviviality and closeness of their working relationship, we do not accept that as being likely or probable.

92. We have the same scepticism in respect of Mr. Arsenault's evidence that he did not discuss the implications for his own terms and conditions of employment after decertification with Mr. Boyd before bringing the termination application. It is possible that his trust in, and reliance upon, Mr. Boyd is so complete that he did not discuss it at all. Mr. Bradley's evidence was to the effect that Mr. Boyd promised that, besides the loss of union benefits, the other terms of employment would remain secure. That, in our view, is the more probable version. In all likelihood Mr. Boyd assured Mr. Arsenault that his employment would be guaranteed and that, subject to the loss of his benefits, his other terms and conditions of employment would remain largely unchanged.

93. What was peculiar about Mr. Arsenault's demeanour when testifying was that although he said it would be better for his family and his job security if the company went non-union, he appeared to have no zeal or enthusiasm for the termination application he had brought. He claims to have paid no attention to the company's difficulties with the union, to have been largely unaware of what financial pressure the company was under as a result of the union's impositions and fines against it. Given how prominent was Mr. Boyd's vituperation against the union, that ignorance of what was going on around him is not believable. And yet, what gives Mr. Arsenault's testimony some credence is that he appears to be someone who would not pay any attention to matters like certification or decertification. On our understanding of his evidence and our assessment of his demeanour, he would never have done so without Mr. Boyd's sanction and prior approval. Assessing his evidence overall, we find him not to be a convincing or trustworthy witness. We find that he tailored his evidence to meet his strong sense of loyalty and obligation to Mr. Boyd, his employer.

94. Mr. Bradley was a somewhat incongruous and unreliable witness. Bytown's counsel suggested that his evidence be disregarded entirely because it was riddled by inconsistencies. We accept that he was not a good witness, but much of what he said fits with the agreed or proven facts. Some of what he said was plainly *ex post facto* justification for decisions he had taken. He is not a wholly believably witness and what he said must be taken with much scepticism. We have indicated above the

extent to which we accept his evidence as being an accurate recollection of what occurred and the extent to which we find that he was inconsistent, unreliable or untrustworthy. Some of what he said was exaggerated or self-serving and some was plainly false, but much of his testimony appeared to have the ring of truth. He gave his evidence fluidly and without hesitation.

95. Mr. Scott gave consistent, careful evidence. His evidence was both internally consistent, and consistent with the agreed or proven facts and with the reasonable inferences to be drawn from those facts. To the extent that there is any contradiction between his evidence and that of Mr. Boyd, we prefer Mr. Scott's version.

96. Allegations were made in Bytown's documents before the Board that Mr. Scott was involved in a conspiracy to discredit Mr. Boyd by suggesting his involvement in Mr. Arsenault's decertification application. That version of events was not even put to Mr. Scott to respond to, and, other than some ambiguous hearsay evidence from Mrs. Bradley, there was no evidence to suggest it. Hence we find no truth in the allegations.

97. In contrast to Mr. Scott, Mr. Boyd was a nervous and reticent witness. Whenever he sensed difficulty, he needed the question repeated, which gave him time to reflect upon his answer and to prepare his position. He was sometimes evasive, at times deliberately not answering what was asked of him and instead replying with something he was not asked. On occasion, he contradicted earlier testimony he had given when it became obvious that he ought to make a reasonable concession. For example, at the start of his cross-examination he took the position that he did not realize that Bytown could incur penalties for ignoring its collective agreement obligation to make monthly remittances to the benefit plans. Later, after some further questioning, he suggested that he knew that penalties were possible, he just thought they would not be imposed on Bytown. Still later he admitted that he understood throughout that Bytown could incur penalties for defaulting on its monthly remittances. Finally he conceded that penalties had been imposed on the arrears and he was aware of the penalties because he was informed of them in the letters sent to Bytown by the benefit plan administrators. This example is one of other reluctant concessions which Mr. Boyd made after initial denials in his evidence.

98. Mr. Scott came across as having conducted himself professionally and properly in relation to Mr. Boyd and Bytown. He may have been somewhat unsympathetic to Bytown's financial predicament, but it was difficult for him to show much sympathy when Bytown was not complying with its most basic obligation to the benefit plan trustees, to file its remittance returns. Had Bytown done that, even if payment of the remittance amounts was not immediately forthcoming, and had Mr. Boyd responded to the letters of demand sent to him by the benefit fund trustees instead of ignoring them, he may well have received a more sympathetic ear than Mr. Scott gave him. Mr. Scott made clear that he had nothing personal against Mr. Boyd. We accept that evidence. When he acted he did so as trustee and custodian of the benefit plans and not out of any vendetta against Mr. Boyd.

Argument

99. Counsel for all the parties correctly argued that this case depended on credibility and upon the reasonable inferences to be drawn from the circumstantial evidence. Counsel for Mr. Arsenault argued that Mr. Arsenault had been a credible witness and that the voluntariness of his petition should be accepted. He argued in the alternative that, even if we were to accept that Mr. Boyd had threatened Mr. Scott that he would decertify the union, there was no evidence of any nexus between that threat and Mr. Arsenault's plainly voluntary and considered decision to bring the termination application.

100. Mr. Arsenault's counsel made reference to Mr. Bradley's evidence in which he said that he was not intimidated by Mr. Boyd's very frequent complaints against the union and that Mr. Boyd left

the decertification up to him and Mr. Arsenault. Counsel argued that this evidence corroborated Mr. Arsenault's evidence that he brought the termination application voluntarily.

101. Bytown's counsel focused in argument upon the efforts which Mr. Boyd had made to restore the company's finances. After an extremely difficult period he had resurrected the company by prudent management, fully restoring its solvency. The company met the payment of all of its arrears in the period from November 1993 until April 1995. The only outstanding amount was the disputed penalty which had been imposed on account of the dues being in arrears. That too was resolved and much in Bytown's favour. Hence by the end of April 1995 any problems that existed between Bytown and the union were over. According to the company's counsel, there was accordingly no motivation on Mr. Boyd's part to launch a decertification application. His mood following the meeting with the benefit plan trustees in April 1995 was one of relief to be rid of what had been a long period of difficulty with the union.

102. Bytown's counsel suggested that it would have been absurd or stupid for Mr. Boyd to have threatened to decertify the union in Mr. Scott's office and then to go ahead and do precisely what he had threatened. He suggested that had Mr. Boyd actually intended to decertify the union, he would not flagrantly have informed Mr. Scott thereof.

103. The conversation between Mr. Scott and Mr. Boyd in Mr. Scott's office contained two conflicting versions of the context in which Mr. Scott had said, "it is easier to get a divorce than to get away from me". Mr. Scott claims he said that in response to Mr. Boyd's challenge that he would decertify the union. Mr. Boyd says that Mr. Scott said that after he said that if the union drove Bytown into bankruptcy he would go and work for a non-union shop and make it his lifelong vengeance to get as much work as possible for the non-union company. Counsel for Bytown argued that Mr. Boyd's version was perfectly possible and that we should find that no threat of decertification was made by Mr. Boyd. Counsel went further and suggested that Mr. Scott's response was not consistent with his version of what Mr. Boyd had said. We do not agree. As we explained earlier, we prefer Mr. Scott's version.

104. Bytown's counsel says that the reason Mr. Boyd's version of what he said should be believed is that what was foremost in his mind at the time was the possible bankruptcy of the company, not the decertification of the union. That is almost certainly so during the early, polite phase of the conversation, when Mr. Boyd was seeking some concession from Mr. Scott. But the comment was not made during the pleading phase of the conversation, when Mr. Boyd was seeking an indulgence from Mr. Scott. It occurred when it was obvious to Mr. Boyd that Mr. Scott appeared to be unbending, unsympathetic and, in Mr. Boyd's view, unreasonably harsh. His angry comments to Mr. Scott were made in retaliation for having his careful appeal for some concession apparently carelessly dismissed by Mr. Scott. He was furious and he made his feelings quite apparent. At that stage of the conversation, Mr. Boyd was no longer the plaintive favour-seeker concerned about Bytown's impending bankruptcy. He was fighting back, telling Mr. Scott he could match his perceived nastiness with some of his own.

105. Bytown's counsel argued that we should draw an adverse inference from the fact that the union had not called as witnesses the former employees of Bytown whom Mr. Bradley said had overheard Mr. Boyd speaking against the union, and whom Mr. Scott said had told him of Mr. Boyd's frequent outbursts against the union. We are not willing to draw that inference because only Mr. Bradley, Mr. Arsenault and Mr. Boyd could testify concerning the request we have found to have been made by Mr. Boyd of Mr. Bradley and Mr. Arsenault to make an application to terminate the union's bargaining rights. The former Bytown employees besides Mr. Bradley were not present when that request was made and their evidence would have been limited to background or peripheral matters.

106. Bytown's counsel urged us, if we find any part of Mr. Bradley's testimony to be believable, as we have, not to allow our suspicions of Mr. Boyd's conduct to cloud our judgement. Our assessment of the issues in this case must be founded upon the evidence proved and not upon what our suspicions may appear to establish. In counsel's words, referring to *Irwin Toy Limited*, [1983] OLRB Rep. April 536, at 543 paragraph 23, we cannot allow our suspicions to be converted into legal conclusions. We appreciate counsel's caution and we have reflected upon the evidence in that light. We are nonetheless satisfied that the conclusions we have reached are not merely the articulation of our suspicions. Rather they are deductions we have reached from an overall assessment of the testimony and of the only reasonable inferences to be drawn from the evidence. This matter is decided not upon the criminal law test of our being satisfied of the conclusions we have reached beyond any reasonable doubt, but upon the civil test of a preponderance of probabilities.

Decision

107. There is a difference between the notion of "voluntariness" which was relevant to petitions signed before the passing of Bill 7, under previous versions of the *Labour Relations Act*, and the provisions of section 63(16) of the Act. The provisions under the repealed Bill 40, read as follows, at section 58(3):

58.-(3) Upon an application under subsection (1) or (2), the Board shall ascertain the number of employees in the bargaining unit at the time the application was made and whether not less than 45 per cent of the employees in the bargaining unit have *voluntarily signified* in writing at the time that is determined under clause 105(2)(j.1) that they no longer wish to be represented by the trade union, and, if not less than 45 per cent have so signified, the Board shall, by a representation vote, satisfy itself that a majority of the employees desire that the right of the trade union to bargain on their behalf be terminated.

(emphasis added)

The current provision is contained in subsection 63(16) of the Act:

63. (16) Despite subsections (5) and (14), the Board may dismiss the application if the Board is satisfied that the employer or a person acting on behalf of the employer initiated the application or engaged in threats, coercion or intimidation in connection with the application.

The voluntariness of the petition is no longer the crucial consideration for determining the validity of a petition. Bearing in mind that the union only weakly advanced the contention that Bytown or Mr. Boyd "engaged in threats, coercion or intimidation in connection with the application", the issue to determine whether the decertification application was in fact initiated by the employer or a person acting on behalf of the employer. That is not the same determination as had to be made previously. There has been a shift of *onus*. The union must now establish that the application has been initiated by the employer, rather than the petitioners having the overall burden of proving the voluntariness of their petition. That is not the only difference. The notions of 'voluntariness' and the absence of 'employer initiation' are not necessarily coterminous or coincidental. Furthermore, the point of consideration by the Board is different as between its former determination of 'voluntariness' and its current consideration of the application of section 63(16) of the Act. The inquiry into voluntariness focused upon the circumstances of the signing of a petition, the current inquiry focuses upon the launching of the application. The focus is not restricted to the signing of the petition and includes the bringing of the application. In most cases this will be a distinction without a difference, but in some it may be significant.

108. Under subsection 63(16) of the Act, if a termination application is initiated by the employer, the Board has a discretion to dismiss it. The reason for this provision is that if a decertification application is really caused by or originated by the employer, and it is not primarily the conception of the employees who make the application, then it represents an improper interference by the employer

in an area which should properly be within the exclusive terrain of the employees. Initiation involves causing, originating or facilitating, the beginning of a process or event. What meaning should the concept, 'initiation', be given in the context of section 63 of the Act? Plainly if an employer prepares a petition to terminate a union's bargaining rights, summons his/her employees and requires them to sign the petition and then requires an employee to initiate a termination application, the employer initiates the decertification application. But that is an extreme and, hopefully, rare manifestation of improper employer interference in the contemplated process of employees freely deciding of their own initiative that they no longer wish to be represented by a particular, or perhaps any, trade union. Such direct, palpable initiation will in all likelihood be an unusual occurrence. But initiation can also occur indirectly, less palpably than in the example suggested, though no less effectively. There are gradations of employer conduct in relation to a termination application, along a spectrum, part of which will be improper and part of which will be acceptable behaviour. The Act determines that when an employer "initiates" a termination application, the Board has a discretion to dismiss the application. There is a continuum of employer conduct, some of which will amount to 'initiation' some of which will not. How then is the distinction to be drawn?

109. We consider that the proper interpretation of the notion of "initiation" is to determine whether the employer's conduct amounted to significant or influential employer involvement giving rise to the termination application. In other words, if the application is founded in the conduct of the employer, then it can reasonably be concluded that the employer has initiated that application.

110. Applying the above test to the facts of this case, we are satisfied that because of significant involvement by Mr. Boyd at an early stage in the process, Mr. Arsenault brought the decertification application. We reach our conclusion on the basis of our assessment of the credibility of the witnesses and upon our evaluation of all of the circumstantial evidence. Our overall analysis and consideration of the facts and issues in this case must include due regard for all of the surrounding circumstances. When considering the circumstantial evidence we ask ourselves what are the reasonable inferences to be drawn from that evidence, and then we ask, are those the more reasonable inferences to be drawn. Applying that test and our assessment of the witnesses' credibility, we have arrived at the following synopsis. By his conduct, advertently or inadvertently, Mr. Boyd created a climate of antagonism against the union among his employees. That was in part subtle, in part palpable. His more insidious inducement took the form of undermining the presence of the union in his company. He continued to pay vacation pay to the employees, though directly from himself and directly to them, and not through the lawful agency he was obliged to use, the electrical industry benefit plans. He established an environment in which no credit for benefits could be given to the union or to the institutions, like the benefit plans, which are created through the negotiation of a province-wide collective agreement by the union. Mr. Boyd's failure to remit the contributions to the benefit plans showed his employees what life could be like without the union. In short, he engaged in a process of anathematization against the union which created an environment among his employees which had the effect of undermining their association with the union.

111. Mr. Boyd's evidence is that he never ever spoke to his employees of the possibility of going non-union and of Bytown's difficulties operating under the union's collective agreement. Given the history of the company's difficulties which Mr. Boyd attributed to the obligation to tender for jobs on the basis of the rates prescribed in the collective agreement, given his general volubility and willingness to express his views easily and openly and to discuss the company's bidding on jobs, and his intimacy with his staff, that is not believable. Mr. Boyd had concluded, during the period during which he had his heart attack and his company very nearly went bankrupt, that Bytown would be much better off in a non-unionized environment. It is not credible that he would not ever have mentioned that conclusion to his employees, given the kinds of matters that he discussed with them and the nature of his relationship with them. We find that he made clear to his employees over a period of time before Mr.

Arsenault's termination application was made that Bytown would be much better off if it were non-union.

112. Mr. Boyd's telephone call to Mr. Bradley on July 26, 1995, on the eve of the first day of hearing of the application, is disturbing. He says that he knew that Mr. Bradley would be testifying against him. That was obvious from the particulars that the union's counsel had faxed to Bytown's counsel earlier that day. But Mr. Boyd still chose to phone Mr. Bradley. He felt he had been betrayed by Mr. Bradley. The conversation strongly suggests prior discussion between them of a decertification application.

113. We have found that Mr. Boyd palpably initiated the decertification application when he requested Mr. Bradley and Mr. Arsenault to go ahead and proceed with it. Furthermore, Mr. Boyd repeatedly expressed the view that Bytown could not survive unless it were rid of the union and he had, on two occasions, threatened to Mr. Scott that he would decertify the union. One of these threats was overheard by Mr. Arsenault. Mr. Boyd's exhortations created a work environment in which Mr. Arsenault was left in no doubt that his ultimate job security with the company depended upon a decertification application. As the only person able to make that application - in a sense, from the perspective forcefully expressed by Mr. Boyd, as the only person who was in a position to save the company - Mr. Arsenault must have felt under extreme pressure to file the termination application. From an overall assessment of all of the relevant considerations, the reasonable inferences to be drawn from the evidence and from the inherent probabilities, we find that Mr. Arsenault would not have brought the termination application, but for the inducements, encouragement and exhortations of Mr. Boyd. Mr. Arsenault was the willing agent of Mr. Boyd, but there is in our view little doubt that the principal and the driving force of the application was Mr. Boyd. We find that he initiated the application and he did so acting on behalf of the company.

114. We have a discretion as to whether to dismiss Mr. Arsenault's termination application, having found that it was initiated by Mr. Boyd acting on behalf of Bytown, Mr. Arsenault's employer. When exercising that discretion the Board must consider whether or not, notwithstanding the employer's initiation of the termination application, the true wishes of the employees may yet be ascertained in a termination ballot.

115. The purpose of subsection 63(16) is to prevent the mischief described therein. A termination application founded in the employer's initiation should result in its dismissal unless there are compelling labour relations reasons why, notwithstanding the employer's initiation of the application, a Board-supervised secret ballot should still be held. No such reasons have been suggested here.

116. Accordingly, we have decided that the proper remedy is to dismiss the application and we make that order.

117. We have found that Mr. Boyd effectively initiated the decertification application and that Mr. Arsenault was his instrument for doing so. The possibility of disciplinary action being taken against Mr. Arsenault by the union was raised in argument at the hearing and the union's counsel gave an assurance that, in the event of the union substantially succeeding in this matter, the union would take no adverse action against Mr. Arsenault. We note and endorse that undertaking.

118. What remains is the union's counter application under section 96 of the Act claiming a violation of section 70 by the company. Section 70 reads:

70. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer

of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

119. The evidence clearly established that the company interfered with the on-going representation of a trade union by its employees. Mr. Boyd influenced Mr. Arsenault to make the termination application. His influence was "undue" or "improper" in that the Act intends that employees will freely decide whether or not they wish to be represented by a trade union, but his prodding and encouragement were excessive and interfering. We conclude that Mr. Arsenault was unduly influenced by Mr. Boyd who exceeded the reasonable limits to his and the company's rights to freely express their opinions.

120. In the circumstances, Bytown violated the provisions of section 70 of the Act. The company is ordered to desist from any further violation of that section of the Act.

DECISION OF BOARD MEMBER R. M. SLOAN; September 30, 1996

1. I dissent from the majority decision.

2. It is agreed by all members of the panel that much of the evidence is contradictory - most significantly - much of the cogent and relevant evidence from all three parties is contradictory.

3. It puzzles me therefore to read in the majority decision that virtually all of the pertinent testimony given by Messrs. Guy Boyd and Shawn Joseph Arsenault is found to be not credible while the testimony of Messrs. Steven Bradley and Ken Scott is eminently persuasive.

4. Even when Mr. Bradley's participation in events should prove troublesome to the union's submissions, the majority dismisses any adverse effect or impact that it might have in the final determination of this instant case, examples of this as can be found in the final sentence of paragraph 59 and again in paragraph 73 in the sentence that begins "that threat was never made to him; it *appears* to be something he invented ...". (emphasis added).

5. Why, if the evidence clearly points to direct employer involvement under section 63(16) of the Act does the majority include reference in paragraph 107 to the now repealed provisions of section 58(3) of what was known as Bill 40.

6. The raising of the issue of "voluntariness" even in such an oblique manner poses a question in my mind about the inability of the evidence to support the majority's findings relative to section 63(1) of the current Act.

7. In the third paragraph of paragraph 107, the majority states that "the voluntariness of the petition is no longer *the crucial consideration* ...". By legislative authority as embodied in the current Act, "voluntariness" *is not a consideration at all*. (emphasis added).

8. It is my contention that suspicion and mere inferences based on significantly contradictory testimony and evidence cannot possibly be the basis for finding a contravention of the Act.

9. In my view such a finding is a serious result, at least for Mr. Boyd, to find that he has violated the Act - a result which will undoubtedly cause him some personal concern -- when the facts and the evidence clearly, in my view, do not support such a finding.

10. With respect to the Board's rather novel and innovative interpretation of section 63(16) I am compelled to note that this section quoted by the majority very clearly employs the words "... that the employer or a person acting on behalf of the employer initiated the application or engaged in threats,

coercion or intimidation - in connection with the application", and, failing elaboration of those words elsewhere in the Act these words should be given their plain meaning.

11. In paragraph 108 we read "initiation involves the causing, originating or facilitating, the beginning of a process or event" and recites a most extraordinary example of an employer who "... initiates the decertification application". Then we come to the most disturbing element of the majority decision where the majority rather than interpret the legislation attempt to write it.

12. Nothing in the legislation says "that ... initiation can occur indirectly ..." and carried to the extreme -- as is done in this case -- any and all conditions existing at an employers place of business can "indirectly" point to employer "initiation" -- which cannot be right, nor can it be the intent of the legislature.

13. Since there is no direct evidence whatsoever of the employer having initiated the application for termination, the rights of the applicant should be respected and a secret ballot representation vote should be ordered.

1807-96-R United Steelworkers of America, Applicant v. Canarm Ltd., Responding Party v. Canarm Employees Association, Intervenor

Certification - Representation Vote - Trade Union - Trade Union Status - Employer asserting that employees affected by certification application already represented by employees' association, that employees' association a trade union within meaning of the Act, and that employer and employees' association parties to a collective agreement within meaning of the Act - Certification application timely even assuming that employer's assertions correct - Board directing representation vote in which employees asked to cast two ballots - First ballot to ask voters whether they wish to be represented by applicant union - Second ballot to ask voters whether they wish to be represented by applicant union or employees' association - Issue of status of employees' association to be determined at hearing following the vote

BEFORE: *Russell G. Goodfellow*, Vice-Chair, and Board Members *O. R. McGuire* and *P. R. Seville*.

DECISION OF THE BOARD; September 25, 1996

1. This is an application for certification.

2. The Board finds that the applicant is a trade union within the meaning of section 1(1) of the *Labour Relations Act, 1995*.

3. It appears to the Board on an examination of the evidence before it, that not less than forty per cent of the individuals in the bargaining unit proposed in the application for certification were members of the union at the time the application was made.

4. In its response to the application, the responding party states that the employees that are the subject of this application are represented by the Canarm Employees Association (the "Association"). The Association is party to a purported collective agreement with the responding party with an expiry date of October 31, 1996. The responding party asserts that the Association is a "trade union" and that the collective agreement is a "collective agreement" within the meaning of the *Labour Relations Act, 1995*.

5. In view of the foregoing, and in the apparent absence of any “timeliness” issue, the Board hereby directs that a representation vote be taken of the individuals in the following voting constituency:

all employees of Canarm Ltd. in the City of Brockville, save and except supervisors and forepersons, persons above the rank of supervisor and foreperson, office, clerical and sales staff.

6. The issue of the status of the Association as the employees’ lawful bargaining agent may be dealt with at a hearing before the Board. Any such hearing will not take place until after the vote is held. In the meantime, voters will be asked to cast two ballots. The first ballot will ask the voters whether or not they wish to be represented by the *applicant* in their employment relations with the responding party. The second ballot will ask the voters whether they wish to be represented by the *applicant or the Association* in their employment relations with the responding party. If the Board ultimately finds that the Association *is* a “trade union” with the lawful right to represent the employees, the results of the second ballot will govern. If the Board finds that the Association *is not* a “trade union” with the lawful right to represent employees, the results of the first ballot will govern.

7. The vote will be held on September 30, 1996. Other vote arrangements will be as determined by the Registrar and set out on the attached “Notice of Vote and of Hearing”.

8. All individuals who had an employment relationship with the responding party in the voting constituency on September 20, 1996, the certification application filing date, are eligible to vote. Employees having an employment relationship on September 20, 1996, the certification application filing date, include employees who were not at work on that date, so long as there is a reasonable expectation of their return to employment.

9. There may also be a dispute between the parties as to whether shipping and receiving staff, part-time and probationary employees, and supervisors other than the maintenance supervisors should be included in the bargaining unit. If any individual holding such a position wishes to cast a ballot, the individual shall identify himself or herself as occupying a disputed position and such individual shall then be entitled to cast a ballot. Any ballot cast by such an individual shall be segregated and not counted until the Board so orders or the parties agree.

10. The responding party is directed to post copies of this decision and of the “Notice of Vote and of Hearing” adjacent to each of the posted copies of the “Notice to Employees of Application for Certification”. These copies must remain posted for 30 days.

11. Any party or person who wishes to make representations to the Board about any issue remaining in dispute which relates to the application for certification, including any matters relating to the representation vote, must file a detailed statement of representations with the Board and deliver it to the other parties, so that it is received by the Board within seven days (excluding Saturdays, Sundays and holidays on which the Board is closed) of the date on which the vote is taken.

12. The matter is referred to the Registrar.

3189-95-R Caressant Care Nursing Home of Canada, Limited, Applicant v. Canadian Union of Public Employees, Local 2225.09, Responding Party

Bargaining Unit - Combination of Bargaining Units - Nursing home employer applying under Bill 7 transition provisions to “de-combine” bargaining units including full-time and part-time workers - Board reviewing its pre-Bill 40 policy in respect of part-time employees in wake

of test in *Hospital for Sick Children* case and subsequent jurisprudential developments - Board not satisfied that assertions about lack of community of interest between full and part-time employees ought to continue to be elevated to level of labour relations axiom - Board rejecting argument that it ought to return to practice whereby part-time employees automatically excluded from full-time bargaining units on the request of a party - In case before it, Board satisfied that existing units appropriate because community of interest existing between full-time and part-time employees - Application dismissed

BEFORE: *B. Herlich*, Vice-Chair, and Board Members *O. R. McGuire* and *R. R. Montague*.

APPEARANCES: *P. Straszynski* and *Steve Pawelko* for the Applicant; *B. Sheehan*, *G. Hewitt* and *J. Lindsay* for the Responding Party.

DECISION OF BRAM HERLICH, VICE-CHAIR AND BOARD MEMBER R. R. MONTAGUE;
October 2, 1996

1. The style of cause is hereby amended to reflect the correct name of the responding party: "Canadian Union of Public Employees, Local 2225.09".

2. This is an application brought pursuant to section 5(2) of the *Labour Relations and Employment Statute Law Amendment Act, 1995* ("Bill 7"). The applicant (the "employer") seeks to create separate bargaining units for its full and part-time employees. The parties filed the following "Agreed To Facts" at the commencement of the hearing in this matter:

AGREED TO FACTS

Background

1. The Applicant operates a Retirement Home and Nursing Home in Lindsay, Ontario. The Homes are located on the same premises and are physically attached.
2. As a result of a displacement application of bargaining rights held by the Christian Labour Association of Canada (CLAC) since 1981, CUPE Local 2225.09 in 1989 became the exclusive bargaining agent for employees in the following bargaining units, which were the same bargaining units for which CLAC held bargaining rights.

RETIREMENT HOME (FULL-TIME)

Article 3 - Recognition and Negotiations

- 3.01 The Employer recognizes the Union as the sole collective bargaining agent for, and this Collective Agreement shall apply to, all employees of Caressant Care Nursing Home of Canada Limited, operating under the style and cause of Caressant Care Retirement Home at Lindsay, Ontario, save and except registered and graduate nurses, supervisors, persons above the rank of supervisor, office and clerical staff and those regularly employed for not more than twenty-four (24) hours per week and students employed during the vacation period.

RETIREMENT HOME (PART-TIME)

Article 3 - Recognition and Negotiations

- 3.01 The employer recognizes the Union as the sole collective bargaining agent for, and this Collective Agreement shall apply to, all employees of Caressant Care Nursing Home of Canada Limited, operating under the style and cause of Caressant Care Retirement Home at Lindsay, Ontario, regularly employed for not more than twenty-four (24) hours per

week and students employed during the vacation period, save and except registered and graduate nurses, supervisors, persons above the rank of supervisor, office and clerical staff.

NURSING HOME (FULL-TIME)

Article 3 - Recognition and Negotiations

- 3.01 The Employer recognizes the Union as the sole collective bargaining agent for, and this Collective Agreement shall apply to, all employees of Caressant Care Nursing Home of Canada Limited, operating under the style and cause of Caressant Care Retirement Home at Lindsay, Ontario, save and except registered and graduate nurses, supervisors, persons above the rank of supervisor, office and clerical staff and those regularly employed for not more than twenty-four (24) hours per week and students employed during the vacation period.

NURSING HOME (PART-TIME)

Article 3 - Recognition and Negotiations

- 3.01 The employer recognizes the Union as the sole collective bargaining agent for, and this Collective Agreement shall apply to, all employees of Caressant Care Nursing Home of Canada Limited, operating under the style and cause of Caressant Care Retirement Home at Lindsay, Ontario, regularly employed for not more than twenty-four (24) hours per week and students employed during the vacation period, save and except registered and graduate nurses, supervisors, persons above the rank of supervisor, office and clerical staff.
3. On or about October 7, 1994, the Local applied for a combination of all four bargaining units (Board File No. 2468-94-R).
4. On or about November 10, 1994, the parties reached a settlement regarding the application to combine bargaining units. Pursuant to that settlement, on November 15, 1994, the Board issued a decision combining the four bargaining units.
5. At the time of the combination, the four separate collective agreements had a uniform expiry date of March 31, 1995.
6. Prior to November 10, 1995, the parties were in the process of negotiating a renewal collective agreement with respect to the combined bargaining unit. In this regard, as of November 10, 1995, the parties had not addressed merging seniority and as of today there remains four separate seniority lists. Subsequent to November 10, 1995, the parties agreed to proceed with joint negotiations without prejudice to the Employer's position that in light of Bill 7 there should be four bargaining units.
7. As of today the sizes of the four bargaining units are as follows:

Nursing Home: 3 full-time employees, 45 part-time and 20 students
Retirement Home: 2 full-time, 19 part-time and 10 students

Staffing levels outlined above are consistent with past years.

Community of Interest - Part-Time/Full-Time Employees

8. Employees in the part-time and full-time bargaining units in each of the Nursing Home and the Retirement Home respectively work along side each other performing the same work involving the same residents, in accordance with the same supervisory structure.
9. In particular, employees in the part-time and full-time bargaining units at both Homes perform the exact same duties.

10. Part-time employees generally are employed on a regular basis. The hours of work for part-time employees generally follows an eight hour pattern. There are, however, shifts of shorter durations worked by part-time employees. Students, do not work on as regular a basis as part-timers and could work varying hours of work.
11. Regarding shift patterns, full-time employees generally work ten shifts every two weeks with part-timers working on the basis of five shifts every two weeks.
12. All departmental meetings held respectively in each facility (i.e. housekeeping, dietary) include both full-time and part-time employees.
13. There are no separate job descriptions for full-time and part-time employees.
14. There is no difference in orientation and staff training for full-time and part-time employees.
15. Subject to the differences noted herein, the conditions of employment of the employees are the same. In this regard, the expired separate full-time and part-time collective agreements mirror each other. That is, the full-time and part-time collective agreements for both the Retirement and Nursing Homes are almost identical. Further, there is a great deal of integration and overlap between the collective agreements. For example, consider that the following provision regarding seniority appears in all four existing collective agreements.

Article 12 - Seniority

- 12.01 (a) Unless stated otherwise, seniority shall be the number of hours worked since last hire or transfer into the bargaining unit.

Specific exception: a person who, immediately prior to being covered by this collective agreement, who was employed in Lindsay by Caressant Care Nursing Home of Canada, Limited, shall be given credit for her seniority accrued in that former position. The credit for an employee coming directly from the full-time bargaining unit at the Nursing Home or from the full-time bargaining unit at the Rest Home shall be determined as follows: such an employee shall be given sixty (60) hours seniority for each full two (2) weeks of seniority accumulated in her former position.

- 12.01 (b) An employee's seniority, as defined in Article 12.01 (a), shall transfer with the employee when she transfers out of one bargaining unit and into another bargaining unit for which the Union has bargaining rights with Caressant Care Nursing Home of Canada, Limited, at Lindsay. For purposes of clarity, an employee may have seniority in only one bargaining unit at any given time except where otherwise provided for in this agreement.

- 12.02 (a) A newly hired full-time employee shall be on probation for forty-five (45) working days from the last date of hiring.

- 12.02 (b) A newly hired part-time employee shall be on probation for three hundred and fifteen (315) hours worked from the date of the last hiring.

- 12.02 (c) During the probationary period, an employee may be terminated at the sole discretion of the Employer.

16. Likewise, the following bridging provision appears in all four collective agreements.

- 15.12 In the event there are no successful applicants from within the bargaining unit, employees other than students covered by the collective agreement respecting part-time employees at the Nursing Home shall be eligible for the vacant position on the same criteria as out in Article 15.03. To be eligible, such employees must submit their names within the time period as set out in Article

15.04. The Employer agrees to then consider applicants from the Rest Home on the same criteria as set out in Article 15.03 before making an outside hire.

17. It is understood, however, that initially job postings and bumping rights are restricted to the members of the relevant bargaining unit in question.
18. While the part-time employees do receive a ten (10%) percent payment in lieu of receiving certain fringe benefits, part-time employees are entitled to receive the following benefits: overtime, shift premium, vacation pay, jury and witness duty and bereavement pay.
19. Further to paragraph 18, full-time employees exclusively enjoy sick leave benefits, the welfare benefits outlined in the full-time collective agreement, including eleven statutory holidays and a uniform allowance.
20. Students are not entitled to benefits or pay in lieu and they are not entitled to shift premium.
21. Progression along the vacation grid and wage grid differs for full-time and part-time employees. For full-time employees it is by years of service and for part-time it is on an hours worked basis.
22. The parties agreed to a pension plan provision that applied to both part-time and full-time employees. The pension plan provision was not in fact applied because the Nursing Homes and Related Industries Pension Plan requires mandatory participation of all eligible employees. The provision of the collective agreement only provided for voluntary participation of part-time employees.
23. Regarding the two rounds of collective bargaining since CUPE was certified, that bargaining has taken place on the basis of joint negotiations at the same bargaining table involving the same representatives of the parties covering all four bargaining units.
24. The parties have only one Health and Safety Committee.
25. All four collective agreements are administered by the same personnel on behalf of both the Employer and the Local.
26. Local 2225.09 in the operation of its affairs does not distinguish between members of the part-time and full-time bargaining units. The President of the Local can and does represent employees in both the full-time and part-time units. The officers of the Local [who] are elected from the membership as a whole have the right to represent the employees of both the full-time and part-time units.

3. In addition to the facts just recited, the parties agreed that a number of documents ought to be marked as exhibits. These included the seniority lists, the most recent collective agreements, copies of the 1989 certificates granted to CLAC in respect of the four separate bargaining units, and the 1994 agreement between the parties along with the resulting Board decision directing the combination of the four bargaining units.

4. There was no issue as to the timeliness of the instant application; indeed, the application was filed even before the Board had the opportunity to generate the new forms required to accommodate such an application. Perhaps as a result of that there is some uncertainty on the face of the application itself which is styled as an "application for the separation of bargaining units" and refers to "Section 7 of the *Labour Relations Act* as amended by Bill 7" [we take the reference to section 7 to be a reference to the Board's power under that section of the *Labour Relations Act* as it existed prior to Bill 7

(hereinafter referred to as the “old Act”) to combine bargaining units]. As the parties agreed at the commencement of the hearing, the actual operative legislative provisions are sections 5 and 6 of the *Labour Relations and Employment Statute Law Amendment Act, 1995*, the relevant portions of which provide as follows:

5. (1) This section applies with respect to bargaining units that include both full-time and part-time employees on the day this section comes into force but did not include both full-time and part-time employees before January 1, 1993.

(2) The employer or the trade union that represents the employees in the bargaining unit may apply to the Ontario Labour Relations Board within 90 days after this section comes into force for a declaration that the bargaining unit is not appropriate for collective bargaining.

(3) The Board shall issue the declaration unless the Board is satisfied that the existing bargaining unit is appropriate because a community of interest exists between the full-time and the part-time employees.

• • •

6. (1) This section applies with respect to bargaining units that were combined into a single bargaining unit under section 7 of the old Act or that were combined on or after January 1, 1993 and before this section comes into force.

(2) Ninety days after this section comes into force, the combined bargaining unit is divided into the separate bargaining units that were combined.

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5. Similarly, the parties agreed that while the application itself purports to seek the “decombination” of all 4 bargaining units, it is only the separation of full and part-time employees into distinct bargaining units which is at issue before the Board. To summarize: four separate bargaining units were combined into one by agreement of the parties and by order of the Board. In February of 1996 the combination of employees of the Retirement Home and Nursing Home was nullified by simple operation of law pursuant to section 6(2) of Bill 7. Subject to this application there are now two separate bargaining units (each consisting of full and part-time employees) of the Retirement Home and the Nursing Home employees respectively. In this application the employer seeks, pursuant to section 5(2) of Bill 7, to separate each of those two units into distinct full and part-time units.

6. The employer argument in this case was concise and straightforward. The intention of Bill 7 was to restore bargaining unit configurations which existed prior to the passage of the *Labour Relations and Employment Statute Law Amendment Act, 1992* (“Bill 40”). Bill 7, it is asserted, codified the Board’s pre-Bill 40 presumptions and, in particular, has revived the presumption that there is generally speaking, no community of interest as between full and part-time employees. Reference was made to decisions of the Board, including *Board of Education for the Borough of Scarborough*, [1980] OLRB Rep. Dec. 1713, to establish and justify the Board’s policy, as it existed prior to the passage of Bill 40.

7. In addition, and in an effort to address some of the specific circumstances of this case, the employer pointed to differences, asserted to be significant in relation to the issue of community of interest, in the treatment of the employer’s full and part-time employees.

8. The union’s submissions were only slightly more complex. Two different approaches were suggested either of which, it was asserted, would lead to the same result. If the only real issue currently before the Board is whether or not there is a community of interest between the employer’s full and

part-time employees, the affirmative conclusion is apparent on the specific facts of this case. Alternatively (though in fact the union's primary argument), the Board ought to approach the issue slightly differently. The real issue ought to be whether the combined full and part-time units are appropriate in this case and the Board ought to approach the matter much as it would in an initial certification application in light of the Board's recent jurisprudence on issues relating to the appropriateness of bargaining units.

9. In support of either approach, the union pointed to the similarity of various terms and conditions of employment to support the existence of a community of interest between the full and part-time employees. We were also pointed to a number of Board decisions including *The Hospital for Sick Children*, [1985] OLRB Rep. Feb. 266 and *Burns International Security Services Limited*, [1994] OLRB Rep. April 347, as indicative of the Board's more recent general approach to appropriate bargaining unit and community of interest issues. The union also challenged the propriety of the Board's pre-Bill 40 policy of routinely separating full and part-time employees at the request of either party. Support for that challenge was provided by reference to Ronald Davis, *The OLRB Policy on Bargaining Units for Part-Time Workers* (Kingston: Industrial Relations Centre, Queen's University, 1991) and some of the empirical studies referred to therein.

10. Both parties addressed the issue of onus in this case. We are satisfied that there is no reason to dwell on this question. The issue in this case, as the Board sees it, is whether or not there is a community of interest as between the employer's full and part-time employees. The case has proceeded on the basis of agreed facts and documents introduced as evidence on consent of the parties. If, at the end of the day, the Board felt that it was hard pressed to answer the question put to it, the question of which party may have failed to discharge the legal onus might be relevant. Such is not the case here.

11. Since the employer asks us to restore, or asserts that Bill 7 has restored, the Board's pre-Bill 40 policy in respect of part-time employees, it is useful to examine the origin and basis for that policy.

12. There is no doubt that the Board's practice of excluding part-time employees from full-time bargaining units is one of considerable vintage. Examples of such apparent automatic exclusions can be found as early as 1946 (see for example, *Brown's Bread Ltd.*, [1946] CLLC para. 16,433) although no specific rationale for the exclusion is explicitly articulated. In more recent but considerably dated decisions the Board has acknowledged its "usual practice [is] to exclude 24 hour persons and students from the full-time bargaining unit if the employer has a history of employing such persons, when one of the parties makes a request for such an exclusion" (see *The Post Printing Company Ltd.*, [1966] OLRB Rep. March 930 at paragraph 7). Although no rationale was provided for the exclusion in the *Post* case, one can find bald assertions in Board decisions of the time to the effect that part-time employees "do not have the same community of interest with the full-time employees" (see *Premier Plastics Limited*, [1969] OLRB Rep. July 508 at paragraph 2). One might note that this formulation is perhaps somewhat less inflexible than the unreflective post-war exclusion. The 1966 formulation requires a request of either party to trigger the exclusion. Thus, it exhibits a certain internal logical inconsistency. The agreement of the parties or their joint failure to request the exclusion could result in the Board finding a bargaining unit which includes full and part-time employees to be appropriate. In other words, though generally expressed in emphatic and unreserved tones, the Board's concern about the lack of community of interest as between full and part-time employees was never so absolute as to invariably preclude their inclusion in the same bargaining unit.

13. In any event, the *Post* case description is one which accurately reflects the Board's practice from 1966 up to 1993 (when Bill 40 came into force). It was not until ten years after the *Post* case that the Board first had occasion to meaningfully address the rationale for its policy. In *Leon's Furniture Limited*, [1976] OLRB Rep. May 232 the Board confirmed its practice of excluding part-time employees

from a full-time bargaining unit although it recognized that individual cases might warrant a departure from that practice. In explaining the “fundamental rationale underlying the Board’s policy”, the Board observed as follows (at paragraph 5):

... we have learned through experience in such applications that part-time employees do not share a community of interest with full-time employees in many aspects of the collective bargaining scenario. More precisely part-time employees are more pragmatically concerned with immediate as opposed to long term benefits with respect to improving their terms and conditions of employment. In applying this proposition to more practical issues the part-time employee usually prefers to sacrifice long term pension, medical and other welfare benefits for a more substantial increase in wages or a longer vacation period. The nature of the seniority provisions contained in a collective agreement with respect to promotions, transfer and lay-offs does not always assume the same degree of significance to the part-time employee as it would the full-time employee. In other words, the Board has discerned a *natural, inevitable schism* in measuring the community of interests between the two categories of employees that invite separation into peculiar bargaining units.

(emphasis added)

14. Similar and related observations can be found in other Board decisions which followed the *Leon’s* case. In *Toronto Airport Hilton*, [1980] OLRB Rep. Sept. 1330 the Board discussed its practice of excluding part-time employees and students from full-time bargaining units:

... This practice reflects the Board’s view, supported by the extensive labour relations experience and knowledge of its members, that part-time employees and students, on the one hand, and full-time employees, on the other hand, do not generally share a community of interest since the former are primarily concerned with maintaining a convenient work schedule which permits them to accommodate the other important aspects of their lives with their work and with obtaining short-term immediate improvements in remuneration rather than with obtaining life insurance, pension, disability, and other benefit plans; extensive seniority clauses; and other long-term benefits.

15. In *Board of Education for the Borough of Scarborough*, [1980] OLRB Rep. Dec. 1713 the Board (at paragraph 12) also adverted to some empirical data in support of its policy:

... The employees in question work precisely one-half the hours of full-time employees and this fact is usually the critical advantage flowing to those employees attracted to part-time work. It is this reality that allows them to accommodate the other important aspects of their lives in a much more substantial way than full-time employment allows. For example, a 1976 study revealed that key reasons given for working part-time included: “going to school”, “personal or family responsibilities” and “not wanting to work ‘full-time’.” See Robertson, *Part-time Work in Ontario: 1966 to 1976*, Research Branch, Ontario Ministry of Labour, August 1976, Study No. 20, page 18. The fact that part-time employees perform the same work under the same conditions as full-time employees and the fact that their terms and conditions of employment are similar are not unusual facts in pre-collective bargaining employment patterns and pale in comparison to respective attachments to the work place of full and part-time employees.

16. It would appear that the Board, in formulating and justifying its policy, has relied upon a particular image of the typical part-time employee. The Board’s conclusion that there is a “natural inevitable schism” between the interests of full and part-time employees is clearly built upon what has been viewed as the transitory or at least tenuous nature of the connection between the part-time employee and the workplace. However sound such images and assumptions may have been in 1946 or even in 1976, it is not at all apparent to us that they continue to apply in the present economic climate. It is no longer evident to us that assertions about the lack of community of interest as between full and part-time employees ought to continue to be elevated to the level of a labour relations axiom.

17. The Board’s practice has come under sharp criticism in the monograph authored by Ronald Davis, cited above. It is not necessary for us to consider that work in detail. What is, however, significant for present purposes, is the fact that Davis cites a number of empirical studies (including J.

Wallace, *Part-time Work in Canada: Report of the Commission of Inquiry into Part-time Work* (Ottawa: Supply and Services Canada, 1983) and M.L. Coates, *Part-Time Employment: Labour Market Flexibility and Equity Issues* (Kingston: Industrial Relations Centre, Queen's University, 1988)) which provide data arguably inconsistent with the Board's assumptions. Those studies support the conclusion that part-time employees, rather than being "attracted" to part-time work because it provides the convenience necessary for the employee to attend to the "other important" aspects of her life, may well be forced into part-time employment out of simple economic necessity and the lack of available full-time work. Other aspects of traditional assumptions about part-time employees, such as a lack of interest in long term employment or a preference for immediate remuneration over long term employment benefits, can equally be called into question on the basis of some of this empirical data. It is not necessary, and neither do we feel capable on the basis of the materials placed before us in this case, to paint some definitive sociological portrait of the archetypal part-time employee for the purposes of determining some universal presumption about their inclusion in full-time bargaining units. The only conclusion we can comfortably arrive at is that the conflicting data and accompanying polemics suggest that any effort to arrive at some monolithic model may well be doomed to failure. Such a conclusion is obviously inconsistent with any continuing presumptions about the exclusion of part-time employees. Hence, we reject the assertion by the employer in this case that we must now return to a practice whereby part-time employees are automatically and unreflectively excluded from full-time bargaining units on the request of a party.

18. Indeed, when we consider some of the recent trends and Board jurisprudence regarding determinations of appropriate bargaining units, we are fortified in our conclusion that the automatic exclusion of part-time employees effected by the simple request of either party should no longer be the Board's reflex practice.

19. There can be no doubt that the Board's decision in *The Hospital for Sick Children*, [1985] OLRB Rep. Feb. 266 (hereinafter referred to as "*Sick Kids*") has ushered in a new approach to bargaining unit determinations. What has now become the essential test for determining the appropriate bargaining unit was articulated in the following concise terms (at paragraph 23):

... We are troubled by the fact that a largely administrative and policy-laden determination has mushroomed in some cases into an elaborate, expensive, and time-consuming process for deciding a relatively simple question: does the unit which the union seeks to represent encompass a group of employees with a sufficiently coherent community of interest that they can bargain together on a viable basis without at the same time causing serious labour relations problems for the employer.

20. The contribution of that case can be usefully highlighted by considering some of its innovation in the context of the *Scarborough* case, discussed and cited above. In coming to its conclusion and affirming the Board's policy of exclusion of part-time employees at the request of either party, the Board, in addition to the factors already discussed above, adverted briefly to the potentially broad and general impact on collective bargaining should the Board relinquish its practice. It should be recalled that in that case the responding party employer attempted to convince the Board that full and part-time employees ought to be included in the same unit. The Board's concern, though not fully elaborated, appears to have been the impact on organizing which might result from the inclusion of part-time employees and the resulting obligation on applicant unions to organize *all* employees. The Board thus expressed its concern that "collective bargaining would have been impeded for entire industries had this Board taken any other view".

21. A moment's reflection reveals how diminished the significance of the Board's previously articulated concern becomes in the wake of the *Sick Kids* formulation. As the Board has often said, the issue in bargaining unit determinations is not whether the unit in question is *the one and only* appropriate unit, but rather is simply whether the unit in question is *an* appropriate unit. And as the *Sick Kids* test

has helped to make clear, the unit in question is the one proposed by the applicant union. Thus, were the *Scarborough* case to have been decided 5 years after rather than 5 years before *Sick Kids* the Board may well have been able to acknowledge that bargaining units including or excluding part-time employees might well be appropriate, but that so long as the unit proposed by the applicant met the *Sick Kids* test the Board would not hesitate to find it an appropriate unit. In other words, to the extent the Board's concerns about the potential impact on organizing have contributed to the maintenance of its practice with respect to part-time employees, those concerns must be seen to have dissipated. While there has certainly been a value to the virtual certainty associated with the Board's practice, that certainty alone is little justification for its continuation. A more flexible approach is the natural result of the *Sick Kids* test. Applicant unions may decide in individual cases whether to organize and seek certification for separate or combined full and part-time bargaining units, confident in the knowledge that, so long as the *Sick Kids* test can be met, their applications will not be defeated by artificial and anachronistic rules about part-time employees. Similarly, employers can be assured that where they can persuade the Board that the bargaining unit proposed by the union, regardless of whether it includes or excludes part-time employees, is one which will create serious labour relations problems, the Board will not find such a unit to be appropriate.

* * * * *

22. The employer argued that the clear and obvious result in this case flows directly from the provisions of Bill 7 and the statutory intent in its promulgation. In short, the employer argues, Bill 7 has codified the pre Bill 40 presumption and/or Board policy to the effect that there is generally no community of interest between full and part-time employees. It is true, as we have already discussed, that the Board, prior to Bill 40, routinely excluded part-time employees from full-time units. However, upon considering the relative statutory treatment of part-time employees, both in terms of certification provisions and in terms of the transitional provisions under which the instant case is brought, we are not persuaded, as a matter of statutory interpretation, that Bill 7 has codified what the employer has referred to as the pre 1993 presumption or policy.

23. Following decades of legislative silence on the issue and as a result of Bill 40, section 6(2.1) of the old Act explicitly directed that the Board deem bargaining units consisting of full and part-time employees to be appropriate. It also (in section 6(2.4) of the old Act) directed the mandatory combination of full and part-time units in certain situations in certification applications. Further, the instant parties are but some among many who saw their pre-existing separate full and part-time units combined under section 7 of the old Act.

24. Bill 7 repealed the old Act and replaced it with the *Labour Relations Act, 1995* (the "new Act"). Essentially, the new Act resembles and in most cases revives the provisions of the Act as they existed prior to the passage of Bill 40. (There are notable exceptions to this general characterization which need not be elaborately detailed for our purposes: they include, of course, significant changes to the certification process but there are also some instances where Bill 40 changes have been retained.) What specific conclusions are to be drawn from these changes in respect of the treatment of part-time employees?

25. First, in the context of certification applications, can the Legislature be said to have codified a presumption regarding the essential lack of community of interest as between full and part-time employees? Has the "natural inevitable schism" formerly identified by the Board been given some form of legislative recognition? We think not. It would have been a simple matter, just as the old Act explicitly mandated the appropriateness of combined full and part-time bargaining units, for the new Act to explicitly preclude the inclusion of full and part-time employees in the same unit. In crafting the new Act the legislators, generally speaking, chose between 3 options: returning to the pre Bill 40

provisions, retaining the provisions of the old Act, and drafting new provisions. In view of the prior legislative silence on the point, any codification of the Board's former practice would have necessitated the drafting of new and explicit provisions, an option which was not chosen.

26. Neither are we persuaded that a consideration of the transitional provisions of Bill 7 leads to any materially different conclusion. A comparison of sections 5 and 6 of Bill 7 is instructive in this regard. Under section 6 bargaining units combined while the old Act was in force are (subject to an agreement of the parties to the contrary) "decombined" by simple operation of law. There is no need for any application to be brought. There is no necessity for the Board to make any finding as to the appropriateness of any bargaining unit in question. There is no need or opportunity for the Board to exercise any discretion or to make any assessment as an expert labour relations tribunal. The units are simply decombed.

27. Section 5, on the other hand, applies specifically to bargaining units which came to include both full and part-time employees while the old Act was in force (presumably whether by way of combination of existing or certification of new bargaining units). Its structure is markedly different. The decomposition of full and part-time employee units is not a matter of simple operation of law. Such a decomposition will only occur when one of the parties takes the steps necessary to effect it. An application must be filed with the Board. There is a limited 90 day window (which has long expired) for the bringing of such an application. There is no decomposition unless and until the Board declares that the combined bargaining unit is not appropriate for collective bargaining. Where the Board is satisfied that the existing bargaining unit is appropriate because a community of interest exists between the full-time and part-time employees the application will be dismissed.

28. Section 5, when viewed on its own and, in particular, when contrasted with section 6, can hardly be described as precluding the continuing inclusion of full and part-time employees in the same bargaining unit. This is not a legislative incorporation of the notion of a natural inevitable schism. The net effect of section 5 is that, unlike the case in respect of other combined bargaining units, there is no universal legislative barrier to the continuation of combined full and part-time bargaining units. Indeed, even in the cases where one of the parties seeks to decombine the unit and even accepting the employer's argument that the onus lies on the responding party to persuade the Board that the existing unit is appropriate, the application may well be dismissed and the combined unit may well continue to exist. Such a result, one which the legislation clearly contemplates, is hardly consistent with any inflexible rule regarding the exclusion of part-time employees from full-time units.

29. It is for these reasons that we are unable to accept the employer's argument that Bill 7 has codified the pre Bill 40 presumption and/or Board policy that there is no community of interest between full and part-time employees.

30. We do, to a large extent, however, accept the employer's argument that insofar as it pertains to the issues surrounding the inclusion of full and part-time employees in the same bargaining unit, the effect of Bill 7 has been to restore the labour relations landscape as it existed on the eve of Bill 40. Now, as then, and subject to whatever specific statutory guidelines or directions there may be, it is and has been the Board's function to determine the unit of employees that is appropriate for collective bargaining. (That statutory charge is now found in section 9(1) of the new Act in wording which has remained unaffected by either Bill 40 or Bill 7.) We qualify our acceptance of the employer's argument in one important respect. It is true that there may be some variability in the precedential value of decisions of the Board based upon statutory provisions since repealed or significantly amended. Put most simply, the fact that the Board, pursuant to a since repealed statutory direction, has found combined full and part-time units to be appropriate may provide little jurisprudential foundation for a

similar conclusion under the new Act. At the same time, however, the Board cannot simply ignore all of its institutional experience under the old Act. There are two relevant aspects of that experience.

31. First, during the period in which the old Act was in force, a cursory review of the Board's own records discloses some 47 instances in which formerly separate full and part-time bargaining units were combined. In addition, during the same period, there would appear to be some 167 instances of certifications in respect of bargaining units which included both full and part-time employees. By contrast there have been only 29 applications under section 5 of Bill 7 to divide any of those units into separate full and part-time units. This bit of empirical data, while admittedly not conclusive evidence, is entirely consistent with the view we have already expressed. It would appear that the proliferation of bargaining units which have included full and part-time employees has, for the most part, not created serious labour relations difficulties, otherwise we might have expected to have seen a more pronounced number of applications such as the present one filed during the relevant and now expired 90 day period. With all due respect to the prior Board decisions, this bit of empirical information is simply inconsistent with any concept of an invariable and natural inevitable schism between the interests of full and part-time employees.

32. Similarly, the Board cannot ignore the evolution of its jurisprudence with respect to bargaining unit issues generally. Again, while decisions clearly related to or founded upon now repealed legislative provisions may be of less utility, the Board's approach has continued to develop. For example in the recent case of *Burns International Security Services Ltd.*, [1994] OLRB Rep. April 347 the Board dealt with whether a bargaining unit ought to be restricted to security guards and what the geographic scope of the unit ought to be. While the specific issues under consideration are of no direct relevance, the case nonetheless captures the contours of the Board's approach in a fashion which is highly relevant to our determination. For example, at paragraph 20, the Board offered the following:

... in recent years, the Board has been much less moved than it once might have been by white collar/blue collar distinctions or position on some notional job hierarchy. Indeed, in the Board's experience, quite diverse groupings have been able to function together without any serious labour relations problems; and it is not obvious to us that if other workers were added to the employer's complement, their inclusion in a bargaining unit would generate any serious labour relations problems.

33. The Board went on to cite a lengthy extract from the *Sick Kids* case, cited above, a portion of which we reproduce:

... the statutory language has remained basically unchanged for more than four decades, and in the early years it provided the basis for making broad distinctions for bargaining unit purposes between such groups as "white collar" office and technical employees and "blue collar" production employees; skilled tradesmen (electricians, plumbers, sheet metal workers, etc.), and unskilled or semi-skilled workers; *part-time employees and full-time employees*; employees working for an employer in one plant or municipality and employees in another plant or municipality; and so on. *However, these fairly simple, and then unexceptional distinctions, do not apply so easily today...* While at one time common opinion and industrial relations practice might have supported a fairly rigid (almost "class") divisions between employee groups, modern collective bargaining seems to be able to thrive quite well in many contexts without such rigid distinctions. It is no longer as easy as it once was to say that it is "inappropriate" to group together for collective bargaining purposes, employees with quite diverse skills, education, training, position in the job hierarchy or probable aspirations.

(emphasis added)

34. In concluding, the Board in the *Burns* case expressed its clear preference for a more flexible approach rather than a strict adherence to so-called Board policies which may or may not continue to reflect labour relations realities. The Board therefore recognized the need to balance the sometimes

competing goals of facilitating collective bargaining and creating bargaining units which are stable and effective:

These goals must be harmonized within a framework that now recognizes (as early Board “policies” might not) that there is no single unique and indisputably “appropriate” unit. There are degrees of appropriateness; or to put the matter another way, sensible, alternative ways in which one can define the bargaining unit without triggering (as the Board in *Hospital for Sick Children* put it) “serious labour relations problems”. A trade union need not seek to represent the *most* comprehensive or *most appropriate* bargaining unit; and as the applicant or moving party, the union has a degree of flexibility in deciding what unit to organize. As long as the unit it seeks does not generate serious labour relations difficulties for the employer, it will be granted the unit that it applies for.

35. Despite the fact that they are separated by almost ten years and a period a significant legislative change, one can easily identify the Board’s decisions in the *Sick Kids* and *Burns* cases as two points along a common jurisprudential trajectory.

36. With those qualifications acknowledged but set aside for the moment, let us return to the employer’s submission that, with respect to the inclusion of full-time and part-time employees in the same bargaining unit, the effect of Bill 7 has been to restore the labour relations landscape as it existed on the eve of Bill 40. While accepting that submission, we are satisfied that performing the somewhat artificial if not revisionist task of trying to assess how the Board might have decided the issue had it arisen, say, in 1992, leads to similar reservations about the continuing propriety of the Board’s concept of a natural inevitable schism between the interests of full and part-time employees.

37. Indeed, one need only consider a 1992 decision of the Board in *Motor Coach Industries Limited*, [1992] OLRB Rep. June 744 to find another point along the *Sick Kids* trajectory which suggests that the duration and certainty associated with a Board practice are not necessarily sufficient reasons for its maintenance. Similarly, reference can also be made to the dangers of elevating certain historical distinctions (like full-time/part-time) to the level of legal rules (see *Homewood Health Centre*, [1992] OLRB Rep. Feb. 181 at paragraph 4).

38. The issue in the *Motor Coach* case was whether, as the applicant union requested, office and clerical employees ought to be included in an “all employee” unit. While the nature of the class of employee in question was different, the case and its reasoning are particularly germane to our considerations. The employer in that case relied upon the Board’s “long established policy ... to place office workers in a bargaining unit separate and apart from other employees, save in the most exceptional circumstances” (see *H. Gray Limited* (1955), 55 CLLC para 18,011).

39. The Board reviewed the origins of the “policy” (at least to the extent they could be identified), and essentially concluded that while there may have been some basis for its formulation in the 1940s, there was no reason to assume that those considerations continued to apply to the modern workplace. In any event, the Board, citing the *Sick Kids* case, affirmed that the issue in a bargaining unit determination is decided by reference to the *Sick Kids* test, not by determining whether exceptional circumstances exist to warrant a departure from an otherwise invariable Board policy. The Board concluded that the bargaining unit sought by the union was appropriate and in a concluding paragraph made the following observations:

The separation of “office and clerical employees” from others in composing a bargaining unit is sufficiently conventional that the Board will act without further inquiry on an otherwise unchallenged agreement by affected parties that such a course of action is appropriate. Equally, given the diversity of modern jobs and of the workplaces in which they are performed, it is plausible today to imagine workplaces in which an “all employee” unit from which “office and clerical employees” are *not* excluded would be entirely appropriate.

40. In view of our previous discussion, we see no reason why the above comments would not be equally valid substituting the words "part-time employees" for "office and clerical employees". Simply put, just as we cannot assert or conclude that the natural inevitable schism has been immutably bridged, neither are we prepared to presume its existence in each and every case. Rather, in cases where the inclusion or exclusion of part-time employees is an issue between the parties, the Board, based on the materials before it, will determine whether or not the unit proposed by the applicant is one which encompasses a group of employees with a sufficiently coherent community of interest that they can bargain together on a viable basis without at the same time causing serious labour relations problems for the employer.

41. The employer in the instant case cannot therefore rely on any so-called policy of the Board to invariably place full and part-time employees in separate bargaining units at the request of a party. The determination regarding the continued existence of the combined full-time/part-time bargaining units in the instant case will have to be made, not on the basis of any rigid Board practice, but rather on the basis of an assessment of the particular circumstances of the case. We now turn to that assessment.

* * * * *

42. The trade union argued that in coming to its conclusion the Board could choose between two routes leading to the same result. The Board could treat the instant matter akin to a fresh certification application and determine, just as the Board does in such cases, whether the existing bargaining units are appropriate. If the Board were satisfied that they were, then the employer's application must be dismissed. The employer candidly conceded that the result in this case could and should be different from the one it was seeking if the tests normally associated with certification applications were to be applied. In view of that concession, the Board's task in determining this case might be exceptionally simple were we to accept the union's urging that we treat this as, in effect, a certification application. While, as will become evident, it makes no difference to the result in this case, we cannot accept the union's invitation that we treat the issue before us simply as the same determination that might be made should the bargaining unit(s) in question be the subject of a certification application. And while there must be some concern about the (at least theoretical) possibility that in an application under section 5(2) of Bill 7 the Board might divide (or affirm) a bargaining unit that it would otherwise consider to be appropriate (or not) in a certification context, we feel compelled, in the context of the time-limited transitional applications which may be brought under the section, to frame our inquiry in the fashion the Legislature has directed.

43. Thus, the question in this case becomes not simply whether the existing bargaining units are appropriate but whether or not such appropriateness can be linked to the existence of a community of interest between the full-time and the part-time employees affected by this application. If such a community of interest exists the application will be dismissed; if not, the declaration sought will be granted.

44. In reviewing the agreed facts and exhibits put before the Board in this case, we are satisfied that there is a clear community of interest between the affected full and part-time employees. All employees in each of the homes work side by side performing the same duties under the same supervisory structure. They all receive the same training and orientation. Not only are the conditions of all employees generally the same, but the four separate collective agreements, which predate the combination of the units, read, in many respects like a single collective agreement with four different seniority divisions (akin perhaps to departmental seniority) - seniority is recognized and maintained upon movements between bargaining units; and while employees in the bargaining unit in question have priority, employees in the other three bargaining units are given job posting rights in the nature of internal candidates.

45. Indeed, even when one considers some of the issues which may be seen to have troubled previous panels of the Board, they point to the existence of a community of interest. The essence of the rationale for the conclusion that there is a natural inevitable schism between their interests flowed from the Board's concerns and assumptions about the respective attachments to the workplace of full and part-time employees. There can be no doubt about that attachment in this case. First of all, the enterprise is built upon part-time employees - there are 86 of them compared with only 5 full-time employees in the two homes. More importantly, a glance at the seniority lists graphically illustrates the attachment of part-time employees to their workplace. In the case of both homes one must move close to the midway point on the list before finding a part-time employee with a hire date more recent than five years old. This is not a transitory workforce. Further, while any expectation of an absolute identity in the benefits received by full and part-time employees would be unrealistic, the part-time employees do receive some benefits as well as a 10 percent payment in lieu of others. Most significant in this regard, however, is the fact that the parties had agreed to a pension plan which would apply to part-time employees. And although that agreement was not consummated, its mere existence demonstrates the similarity of interests between the full and part-time employees and is a dramatic example inconsistent with the traditional stereotype of part-time employees' preference for immediate remuneration over long term benefits.

46. In all of the circumstances and for all of the reasons set out, we are satisfied that the existing bargaining units are appropriate because a community of interest exists between the respective full-time and part-time employees.

47. This application is dismissed.

DECISION OF BOARD MEMBER O. R. MCGUIRE: October 2, 1996

I dissent. Reasons to follow.

3727-95-R; 0110-96-U The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 221, Applicants v. **Centro Mechanical Inc.**, Responding Party

Certification - Change in Working Conditions Evidence - Construction Industry - Evidence - Intimidation and Coercion - Practice and Procedure - Representation Vote - Unfair Labour Practice - Witness - After conducting inquiry into witness's alleged prior inconsistent statement, Board declining to declare witness hostile or adverse - Board concluding that union used charges and threat of charges under its constitution to intimidate employees into supporting certification application - Certification application dismissed under section 11(2) of the Act - Board finding that employer violated statutory freeze when it changed wage rate it had agreed to pay to two employees - Compensation ordered

BEFORE: *G. T. Surdykowski*, Vice-Chair.

APPEARANCES: *James Fyshe, John Telford, Brian Christie and Kim Choate* for the applicants; *David Cowling, David C. Davies, Chris C. Cosentino and Peter Osborn* for the responding party.

DECISION OF THE BOARD; September 6, 1996**I Board File No. 3727-95-R**

1. Board File No. 3727-95-R is an application for certification in the construction industry. By decision dated January 30, 1996, a differently constituted panel of the Board determined that the “applicant” is a council of trade unions within the meaning of sections 1(1) and 126 of the *Labour Relations Act, 1995* which has been authorized by its constituent trade unions to discharge the responsibilities of a bargaining agent within the meaning of section 12(1) of the Act, and which is an affiliated bargaining agent of a designated employee bargaining agency.

2. I note that the Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (“OPC”), which it appears the previous panel considered to be the applicant, the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (the “International”), and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting and Industry of the United States and Canada, Local 221 (“UA Local 221”) are *three* distinct trade union entities. Indeed UA Local 221 is one of the constituent trade unions of the OPC. Although more than one trade union can make an application for certification with respect to a group of employees, it is not appropriate for more than one trade union to bring a single application for certification; that is, each trade union must bring its own application. (Otherwise it is not at all clear how bargaining rights would be assigned (at least outside of the ICI sector) in the event of a successful application.) In this case, it appears that the OPC is the proper applicant.

3. In any case, the Board also determined the bargaining unit and directed that a representation vote be taken in that unit.

4. A representation vote was held on February 6, 1996. All five persons on the voters’ list agreed to between the parties cast ballots. When the ballots were counted, all five were found to have been marked in favour of the applicant. Ordinarily, this would have resulted in certificates issuing pursuant to section 160(1) of the Act. However, the responding employer (“Centro”) alleges that the applicant has breached the Act, and specifically sections 76 and 87(2) thereof, such that the representation vote likely does not reflect the true wishes of the employees about being represented by the applicant. Further, Centro’s position is that no other remedy, including the taking of another representation vote would be sufficient to counter the effects of the applicants alleged misconduct, and that the application should therefor be dismissed under section 11(2) of the Act.

5. Simply put, Centro alleges that the applicant intimidated or coerced three of the employees effected by the application, Bruno Battiston, Loris Battiston and Carmine Brogno, into signing “union cards” and voting in favour of the applicant. The applicant, of course, denies that it has done anything improper.

II The Hostile or Adverse Witness Issue

6. Centro was content to proceed first. It called six witnesses, including all three employees it alleges were threatened, intimidated and coerced by the applicant. One of the employee witnesses was Carmine Brogno. Brogno was an employee of the bargaining unit herein at the time the application was filed. He is, and was at all material times, a member of UA Local 46, another of the constituent trade unions of the OPC. Centro called Brogno as a witness to give evidence concerning its allegations that the applicant had engaged in unlawful conduct. In the course of his examination in chief, counsel for Centro moved that Brogno be declared a hostile or adverse witness.

7. This issue arose out of a series of questions and answers concerning Centro's unfair labour practice allegations. In the course of examining Brogno in chief, counsel for Centro asked him a series of questions concerning these allegations. Brogno testified that he agreed to sign a membership card because of the internal trade union charges which had been laid against him, in an effort to have those charges dropped, as he had been led to believe they would be if he "co-operated" with the applicant in that way. Brogno said that John Telford, Business Agent for UA Local 221, told him that "you help me and I'll help you" and that he understood that his "help was to sign to get a vote, if it passes it passes, if it doesn't it doesn't." Counsel then specifically asked Brogno if he understood that his "help" applied to the vote as well, to which Brogno replied that "no, just if you sign, that's all I want from you." Counsel then put it to Brogno that Brogno had told him earlier that morning that he felt he had to vote in favour of the applicant as well. Brogno denied this and suggested that counsel had misunderstood him if that's what he thought. Counsel then asked the Board to declare Brogno to be a hostile witness because his testimony contradicted his earlier statement to counsel.

8. Strictly speaking, the Board is not bound by the rules of evidence (see section 111(2)(b) in that respect). However, when it comes to a question of whether a witness ought to be declared hostile or adverse, the Board has followed the approach taken in the courts (see, for example, *The Corporation of the Town of Meaford*, [1981] OLRB Rep. June 634; *F.G. Bradley Co. Limited*, [1973] OLRB Rep. June 342).

9. In that respect, the *Ontario Evidence Act* provides that:

1. In this Act,

- (a) "action" includes an issue, matter, arbitration, reference, investigation, inquiry, a prosecution for an offence committed against a statute of Ontario or against a by-law or regulation made under any such statute and any other proceeding authorized or permitted to be tried, heard, had or taken by or before a court under the law of Ontario;
- (b) "court" includes a judge, arbitrator, umpire, commissioner, justice of the peace or other officer or person having by law or by consent of parties authority to hear, receive and examine evidence. R.S.O. 1980, c.145, s.1.

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2. This Act applies to all actions and other matters whatsoever respecting which the Legislature has jurisdiction. R.S.O. 1980, c.145, s.2.

• • •

23. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may contradict him by other evidence, or, if the witness in the opinion of the judge or other person presiding proves adverse, such party may, by leave of the judge or other person presiding, prove that the witness made at some other time a statement inconsistent with his present testimony, but before such last-mentioned proof is given the circumstances of the proposed statement sufficient to designate the particular occasion shall be mentioned to the witness and he shall be asked whether or not he did make such statement. R.S.O. 1980, c.145, s.23.

10. Section 23 of *The Evidence Act* is a legislated exception to common law rule that it is impermissible to introduce general evidence to impeach the character of your own witness. However, even in common law, a party can contradict its own witness as to particular facts. In this case, Centro sought to contradict Brogno, its own witness, with respect to particular facts, or at least with respect to what he said about those particular facts.

11. Much has been written of the meaning of “adverse” and “hostile” in this context, and of the effect of a finding that a witness is adverse or hostile. It appears that what it comes down to is this: being “hostile” is merely a stronger form of being “adverse”, so that all “hostile” witnesses are “adverse”, but not all “adverse” witnesses are necessarily “hostile”. As the Ontario Court of Appeal held in *Wawanesa Mutual Insurance Co. v. Hanes* (1961) O.R. 495, a witness need not be “hostile” to be found to be “adverse”, and a witness may be found to be adverse in any case in which by his/her own evidence the witness takes a position opposed in interest to the party calling him/her and it is proved that the witness made a prior statement which is inconsistent with his/her testimony (see also, *Boland vs. The Globe & Mail Ltd.* (1961) O.R. 712 (Ontario Court of Appeal)).

12. The Court of Appeal’s decision in *Wawanesa Mutual Insurance Co.*, *supra*, provides a useful summary of the law in this area (at page 528):

It is to be observed that the only right given by s.20 is, if the witness proves adverse, with leave of the Judge, to prove that the witness made at other times a statement inconsistent with his present testimony. There is nothing in the section as to cross-examination and the section does not come into operation unless there is evidence to prove a prior inconsistent statement. There is, I think, no question that if a witness proves hostile and is so declared by the Judge, counsel may cross-examine the witness generally as to the matters in issue in the manner stated by Cross, including cross-examination as to any prior inconsistent statements, whereas on an application made under s.20 of the *Evidence Act*, the only right that can be given is to prove the prior inconsistent statement after having drawn to the attention of the witness, the statement and the circumstances of the making of it and asking him whether he had in fact made it. If he admits having made it that admission supplies the proof and the calling of witnesses to prove the making of it would be unnecessary but unquestionably he could be questioned in regard to whether the prior statement was true and if he admitted its truth it would be evidence to be considered in the case. If he denies its truth but admits having made it, or if he does not admit having made it and it is proved by other witnesses that he did, then it goes only to the credibility of the witness.

Consequently, where a witness is shown to be hostile (something which seems to be can be the subject of evidence which is not limited to the alleged prior inconsistent statement(s)), the common law rule applies and that witness will be subject to cross-examination by the party calling him/her with respect to all matters in issue, while if s/he is merely “adverse”, the *Evidence Act* applies and the party calling the witness is only entitled to prove the prior inconsistent statement and is limited in its cross-examination to that issue. At pages 534-535 of the reported decision, the Board in *Wawanesa Mutual Insurance Co.*, *supra*, went on to describe the process which ought to be followed when such an issue arises. For the purposes of a tribunal like the Board, which operates without a jury, that process comes down to this:

1) The calling party should raise the issue, describe the alleged prior inconsistent statements and the circumstances in which the statements are alleged to have been made, and seek to leave put the statements to the witness.

2) If it appears that the witness may have made a statement with respect to matters in issue which appears to be inconsistent with his/her testimony, leave should be granted to put the alleged prior statements and circumstances to the witness.

3) If the witness admits having made the statement and the truth of the contents of the statements, his/her admission may be accepted as evidence of the contents.

4) If the witness denies making the statements, the calling party will be permitted to introduce evidence to establish that the alleged statements were made. Upon hearing all of the evidence in that respect, the Board must determine, whether, on a balance of probabilities, the alleged statements were made.

5) If the Board determines that the statements were not made, the moving party’s request will be denied and it will be required to proceed in the normal course.

6) If the Board is satisfied that the statements were made, the calling party will be allowed to cross-examine the witness as an "adverse" or "hostile" witness, as the Board determines is appropriate in the particular case.

13. I note that proof of a prior statement is not proof of the truth of the contents of that statement unless the witness admits that both that s/he made the statement *and* that the facts stated in it are true. Otherwise, proof of the statement can only operate to impeach the witness's previous testimony and his/her credibility.

14. In this case, Centro's counsel was allowed to put the alleged prior statements to the witness without objection (quite rightly in the circumstances) by the applicant. When Brogno denied making the statements alleged, counsel sought and was granted leave to call evidence to prove those alleged statements. Because counsel was himself to be Centro's only witness in that respect, the hearing had to be adjourned so that another lawyer from his firm could act as counsel with respect to that issue.

15. Mr. Cowling testified that between 7:30 and 8:00 a.m. on June 18, 1996, the first scheduled day of hearing, he interviewed three witnesses (Messrs. Helyer, Babcock and Cosentino) in his offices. At approximately 9:00 a.m. he arrived at the Board where he met the three employee witnesses (Messrs. Bruno and Loris Battiston, and Brogno) who he had summoned to attend the hearing. Cowling introduced himself to them as the company's lawyer and took them to an anti-room outside of the boardroom in which the hearing was to begin at 9:30 a.m. Cowling said he interviewed all three of them together but it was apparent that his questions were directed primarily at Bruno Battiston. The entire interview lasted some ten to fifteen minutes, in the course of which Cowling testified that Brogno mentioned that he felt he had to co-operate with the applicant in order to have the union's internal charges against him dropped and that his co-operation included assisting and organizing the company and voting in favour of certification. Cowling stated that Brogno said that the reason he voted for the applicant was to get the charges against him dropped.

16. Upon considering the evidence of Brogno and Cowling, the only evidence before the Board on the issue, and the representations of the parties, I dismissed Centro's motion in a brief oral ruling.

17. There was nothing before the Board which suggested that Brogno was hostile to Centro. Cowling did say that the three employee witnesses seemed to be hesitant to speak with him, but that is hardly surprising in the circumstances and even at its highest does not suggest hostility. The only real issue is whether Brogno should be declared "adverse", a question which turned on whether the alleged inconsistent statements were made. In considering that question, I carefully reviewed all of Brogno's evidence, particularly his testimony with respect to the alleged prior inconsistent statement, and the evidence of Cowling, particularly his evidence of the circumstances in which the alleged statements were said to have been made, and which I note Brogno was not questioned about. I also considered the seriousness and importance of the issue to which the evidence in question related, that Brogno is no longer an employee of Centro but continues to be a member of the United Association, and that the only two other persons present during the "interview" at which the alleged statements were said to have been made were not called to testify.

18. In the result, I was satisfied that both Brogno and Cowling had honestly recounted what they believed had been said, but that there was a genuine misunderstanding with respect to what was said between them. It was easy to see how such a misunderstanding could have arisen. Cowling, who had pleaded the case for the employer, came to the Board on June 18, 1996 with a preconceived notion of what had happened. At the Board he met the three employees in a group for the first time. He spoke with all three of them together in a very brief encounter just outside the hearing room just before the hearing was scheduled to begin. On his own evidence, Cowling focused on Bruno Battiston, not Brogno, in their discussions and it is not particularly surprising that in these circumstances Cowling

“heard” what he hoped and expected to hear, according to Cowling, from Brogno to whom he was not even speaking directly. In the face of Brogno’s agreement that he had told Cowling (and as he had also testified) that he had agreed to “sign for” and help organize Centro because of the internal trade union charges against him, but his complete and absolute denial that he had either told Cowling that he also felt compelled to vote for the applicant in the representation vote or that he did in fact feel compelled to do so because of those charges, I was not satisfied that Brogno had made the alleged inconsistent statement. Cowling may have “heard it”, but Brogno did not say it.

19. Accordingly, I dismissed Centro’s motion and the hearing proceeded. (I noted that Cowling resumed acting as counsel for Centro with the express agreement of the applicant.)

III The Facts

20. I turn now to the merits of Centro’s allegations. First, I have not found the evidence of Michael Helyer, employed by another company as a project manager at one of the job sites in question during part of the material times, or the evidence of Allan Babcock a site superintendent also employed by another company, to be particularly helpful. Their evidence was very general and has little probative value other than that it tends to suggest that the applicant was putting some pressure on the three employees, particularly Bruno Battiston and that the applicant was pursuing Bruno Battiston and threatening to take internal trade union proceedings against him. Bruno Battiston appeared to be quite a reluctant witness. In addition, English is not Mr. Battiston’s first language, and although he was provided with an interpreter, he persisted in attempting to answer the questions put to him in English, before they had been translated for him. As a result, it was apparent that he did not fully understand all that was asked of him and many of his answers were not particularly responsive to the questions asked. Accordingly, the reliability of his evidence is suspect except where it is corroborated by other reliable evidence. Brogno also appeared uncomfortable responding to Centro’s questions, although less so than Bruno Battiston. Nevertheless, he gave his evidence in a reasonably candid and straightforward manner, except perhaps when he testified with respect to the manner in which he voted and why. Loris Battiston testified in a straightforward manner and I find him to be a reliable witness when he restricted himself to testifying about matters about which he had direct knowledge, but not when he testified about things which he had heard as though he had himself heard them or when he attempted to extrapolate from what he thought he knew. Chris Cosentino, the owner and president of Centro, was clearly unable to resist the influence of what he perceived to be his self-interest. As a result, the reliability of his evidence was also suspect. Indeed, on several points it seems improbable that what he says happened occurred in quite the way that he described. In that respect, where Cosentino’s evidence conflicts with that of Brogno, Loris Battiston or Robert Choate, I prefer the evidence of the latter. I also find John Telford’s evidence generally reliable as far as it goes, except that his recollection of the chronology of events is not entirely accurate. (For example, Telford testified that he met with Bruno and Loris Battiston, and Brogno in May 1995 on the job site, a time when Bruno Battiston was the only one of the three there).

21. Having assessed the testimony of the various witnesses, and the documentary evidence before the Board, I find the following material events occurred.

22. Centro was incorporated at or about the time when it obtained two jobs in Kingston, the main one being a \$12 million addition and renovation job at a correctional facility known as the “Pittsburgh Institution”. Centro took over a contract in that latter respect from another mechanical contractor which had defaulted on the contract. Centro actually came on to the job site in late March or early April 1995.

23. Bruno Battiston lives in Toronto. He was a member of UA Local 46 at all material times. He accepted a job as a working foreman on Centro’s Kingston jobs. It appears that he was the first Centro employee on the Kingston jobs, and that although he worked with the tools he was responsible

for overseeing the job for Centro and acted as Centro's liaison with a general contractor and others on the jobs (I note that it is agreed between the parties that Bruno Battiston is an "employee" within the meaning of the Act for the purposes of these proceedings). It was through Bruno Battiston that Loris Battiston, Bruno's son, and Brogno, a friend of Loris with whom Bruno had worked for some years, obtained employment with Centro on the Kingston jobs. Indeed, it was Bruno Battiston who effectively hired Loris Battiston and Brogno. Loris Battiston and Brogno were members of UA Local 46 at all material times as well. Brogno started on the Kingston jobs in mid June 1995. Loris Battiston started some time later, immediately after New Year's Day 1996.

24. John Telford is the Business Manager for UA Local 221 (Kingston). He was aware of and watching the Pittsburgh Institution job site before Centro came onto it. Soon after Centro came onto the site, in the person of Bruno Battiston, Telford came to the site and had a "chat" about the job with him. He did not identify himself to Bruno until the second visit to the site one and a half to two weeks later. During that second visit, in mid May 1995, after he became aware that Bruno Battiston was a United Association ("UA") member, he spoke to Bruno Battiston about his obligations to the UA and specifically his obligation to obtain a travel card to work in UA Local 221's jurisdiction. It appears that Bruno Battiston did not understand this obligation to extend the work for non-union contractors if he understood the travel card rules at all.

25. Although it is not clear how often he did so, Telford continued to visit the job site regularly. He continued to remind Bruno of the travel card requirement, which he also raised with Brogno after he came onto the job, either through Bruno Battiston or directly. He also began to speak to them about their organizing obligations to the UA. At that time, Telford was both seeking information which might help the OPC and UA Local 46 in an application under sections 1(4) and 69 of the Act with respect to Centro, Malfar Mechanical Inc. and Torontario Plumbing and Heating Inc. (Board File No. 1792-95-R) and was considering the possibility of trying to certify Centro. Telford also raised the possibility that internal union proceedings could be taken against Bruno Battiston and Brogno for their violation of the UA's travel card rules.

26. Telford pursued this with Bruno Battiston and Brogno during each successive visit at the job site. He became increasingly persistent and began to suggest that if they didn't "help him" (by signing cards so that Centro could be certified), they would likely be charged under the International constitution for working without a travel card. By the end of the summer, when Telford began to concentrate on trying to certify Centro, and after, as he put it, he felt he had explained their obligations sufficiently and it was apparent that Bruno Battiston and Brogno were not going to "co-operate" and live up to those obligations, Telford decided to increase the pressure and, in late August 1995, he filed charges, under section 223(n) of the International Constitution, alleging that Bruno Battiston and Brogno were "working at the Piping Trade within the jurisdiction of Local 221 without depositing a travel card."

27. After receiving notice that he and Bruno Battiston had been charged, Brogno telephoned the OPC to see if the situation could be "straightened out". As a result of this telephone call, Brogno and Bruno Battiston met with Joe Ferro and Brian Christie, two OPC representatives in Toronto. Christie and Ferro also raised the issue of co-operation to certify Centro, and it was suggested to Bruno Battiston and Brogno that they could "help us (the UA) and help themselves" by signing membership cards so that Centro could be certified. In that respect, Ferro and Christie indicated that if Bruno Battiston and Brogno helped organize the company, they would see what could be done about the charges against them. Brogno and Bruno Battiston declined, and, on or about October 2, 1995, UA Local 221 held a "trial" with respect to the travel card charges laid by Telford.

28. Brogno and Bruno Battiston were both convicted in UA Local 221's jurisdiction without obtaining a travel card, contrary to the International constitution. A \$500.00 fine was levied against each of them in that respect. This is the usual fine levied in such cases, and is also the maximum fine which can be levied (without the approval of the International according to Telford, although there doesn't appear to be anything in section 223 of the UA constitution which would permit a larger fine or some other penalty).

29. After Bruno Battiston and Brogno were notified of their respective convictions and fines, Telford approached them again. He indicated that he was more interested in certifying Centro than he was in their \$500.00. Telford said he was not after them; he wanted Centro unionized. When Bruno Battiston and Brogno continued to reject these advances, Telford decided to apply even more pressure. First, he told them that if they did not co-operate they could be charged under the International constitution for working for a non-union company; namely, Centro. Later in October 1995, when Bruno Battiston and Brogno still didn't co-operate, Telford quickly charged them with working for an employer which did not have a collective agreement with any UA entity, contrary to section 198(a) of the International constitution. This is a much more serious charge, and upon conviction can result in a UA member being expelled from the union or other penalties, including a fine of up to \$10,000.00. These charges had to be filed through UA Local 46, Bruno Battiston's and Brogno's home local union, and required Local 46's co-operation in that respect.

30. Bruno Battiston and Brogno still would not sign UA membership documents to support an application for certification with respect to Centro.

31. In early January 1996, Loris Battiston became employed by Centro at the Kingston job sites. Within a week, Telford was on him too. He told Loris Battiston about what had happened to Bruno Battiston and Brogno and the charges laid against them, and said that he was preparing charges against Loris Battiston as well. Such charges were in fact laid.

32. Also in early January 1996, Bruno Battiston and Brogno went to UA Local 46 to pay their monthly membership dues for the year as it has been their habit to do. They were told that they would not be allowed to pay their dues for all of 1996 but that U. A. Local 46 would accept their dues for January and February 1996 pending the payment of the travel card fine and the disposition of the "working non-union" charges against them.

33. In mid January 1996 Bruno Battiston and Brogno were notified that February 7, 1996 had been fixed as the trial date for the "working non-union" charges against them.

34. After that, Telford approached Bruno Battiston and Loris Battiston and Brogno together. He told them, directly, through Bruno Battiston, or both, that if they would help him he would help them. Telford said that if they would help him get Centro certification he would see what he could do about getting the charges dropped. Telford did not actually promise that the charges would be dropped, but that was the clear implication of his approach to the three employees who clearly believed that Telford had the ability to make the charges "go away", and that he would do so if they "co-operated" with him.

35. Still Bruno Battiston and Brogno did not cave in. Nor did Loris Battiston. They talked among themselves and approached Cosentino, who they had kept informed throughout.

36. Bruno Battiston, Loris Battiston and Brogno were clearly worried, especially Bruno Battiston who was concerned about losing his membership and the effect that that would have on his pension and his ability to retire in a few years, and Brogno, who was worried about losing his benefits and his ability to work for unionized contractors. Seeing this, Cosentino made arrangements for them to see a lawyer on a Sunday in late January 1996. (I reject Cosentino's denial in that respect. I find it highly

improbable that the three employees would have done so, or that if they had they could have found a lawyer who could advise them in the area so quickly.)

37. When this lawyer indicated that little or nothing could be done, Cosentino took them to another lawyer, whose advice was much the same; that is, that the three employees were in a difficult position and that while some proceedings might be open to them there really was nothing they could do and they should do as the union asked.

38. As a result, Bruno Battiston, Loris Battiston and Brogno felt that they had no choice, and in order to extricate themselves from the situation Brogno telephoned Telford and told him that they were ready to sign. On Monday, January 22, 1996, they met with Telford and signed application for membership in the UA (and not, I observe, in any constituent UA Local of the OPC). The following day, another employee also signed an application for membership, and on January 25, 1996, this application was filed. Subsequently, a representation vote was held as aforesaid.

39. Bruno Battiston and Brogno have never paid the \$500.00 fines levied against them for their travel card violation convictions. No UA entity has pursued payment of those fines, and it is apparent that the UA has no intention of trying to collect those fines. There has been no trial with respect to the "working non-union" charges against Bruno Battiston or Brogno. The February 7, 1996 trial was cancelled. It has not been rescheduled and it is apparent that these charges will not be proceeded with. Indeed, by letter dated February 12, 1996 in that respect, Telford wrote to UA Local 46 as follows:

Please be advised that Local 221 has dropped all charges against Bruno Battiston and Carmine Brogno.

I would also like to make you aware that Mr. Battiston and Mr. Brogno were instrumental in helping Local 221 certify Centro Mechanical.

The Executive Board of Local 221 has agreed to drop the \$500.00 fine for Travel Card violation and we will not be proceeding with any further charges.

I would like to thank you for your co-operation in this matter.

40. Similarly, Loris Battiston has not gone to "trial" on his travel card charges and it is apparent that these will not be pursued either.

IV Positions of the Parties

41. The UA's position is that neither Telford nor any other UA Representative has done anything improper. Further, the UA argues that the Board should keep up with the changes to the Act made by Bill 7 and not continue to require or be particularly concerned about membership evidence submitted in support of an application for certification, which counsel referred to as "silly little cards" when the certification system in this province is no longer document based. The applicant argued that the Board should not be paternalistic when it comes to representation votes, and that there is no indication at the employees ability to freely cast their ballots in this case has been compromised, or that the representation vote does anything other than reflect the true wishes of the employees. Finally, the applicant points to the employer's conduct (at a meeting at which Telford and another union representative were also present, and in taking the three employees to lawyers, for example) as being improper conduct which the Board should take into consideration.

42. Centro complains that the applicant has breached sections 76 and 87(2) of the Act. These provides that:

76. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

87.(2) No trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions shall,

- (a) discriminate against a person in regard to employment or a term or condition of employment; or
- (b) intimidate or coerce or impose a pecuniary or other penalty on a person, because of a belief that the person may testify in a proceeding under this Act or because the person has made or is about to make a disclosure that may be required in a proceeding under this Act or because the person has made an application or filed a complaint under this Act or has participated in or is about to participate in a proceeding under this Act.

Section 11(2) of the Act, upon which Centro relies in support of its submission that this application should be dismissed, provides that:

11. (2) Upon the application of an interested person, the Board may dismiss an application for certification of a trade union as the bargaining agent for the employees in a bargaining unit in the following circumstances:

- 1. A trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions has contravened the Act.
- 2. The result of the contravention is that a representation vote does not or would not likely reflect the true wishes of the employees in the bargaining unit about being represented by the trade union.
- 3. No other remedy, including the taking of another representation vote, is sufficient to counter the effects of the contravention.

V Decision

43. I turn first to the UA's arguments with respect to the scheme of the current Act. As the Board observed in *Burns International Security Services Limited*, [1996] OLRB Rep. March/April 192 (at paragraphs 24-38), prior to Bill 7 and the proclamation of the current Act, the certification process in this province was a document based system in which the representation vote was essentially a residual mechanism, and the vast majority of certification applications were disposed of without a vote. Bill 7 changed all of that, and under the current Act the certification system is vote based. The intent of the Act now is to provide a "vote in every cases" through a streamlined representation vote system which is designed to avoid front-end litigation and give employees and opportunity to express their wishes in a quick representation vote. The fact that the certification process is no longer document based, in the sense that now the outcome of the certification application is determined (subject to section 11) by the result of the representation vote rather than by an assessment of documents, does not mean that there are no documents involved, or that the documents which are involved are unimportant.

44. On the contrary, now as before, an application is made by filing an application for certification document in the prescribed form, and the Act contains legislated pleading and filing rules which no prior *Labour Relations Act* did (previous such rules were always contained in the Board's Rules of Procedure). In that respect, section 7(11) requires that a trade union applicant deliver a copy of its application to the employer, and section 7(12) requires that it include two things in its application for certification: a written description of its proposed bargaining unit, and an estimate of the number of

individuals in it. Section 7(13) requires that the union file a list of its members in the proposed unit and *evidence of their status as union members*, something which both historically and under the current scheme has primarily consisted of applications for membership or, in the construction industry certificates of membership. Then, section 8(2) requires the Board to assess the union's *documents*, and if upon doing so the Board determines that 40% or more of the individuals in the trade union's proposed bargaining unit were members of the union at the time the application was filed, the Board is required to direct that a representation vote be taken in the voting constituency (which is determined under section 8(1) and which may be different from the applicant's proposed bargaining unit). Consequently, perhaps the UA considers membership evidence and the Board's regard to it to be "silly", but the fact is that the Act requires such evidence and the union cannot obtain a vote without it.

45. Having said that, it is not at all clear that under the current Act the Board should or even that it can inquire into any alleged deficiencies, irregularities or other problems in an applicant trade union's membership evidence, given that section 8(9) of the Act provides that when disposing of an application for certification, the Board *shall not consider any challenge* to the information provided under section 7(13), which includes the union's membership evidence. This suggests that the Board's pre-Bill 7 approaches and jurisprudence with respect to membership evidence issues may have little application under the current Act. Still, such issues and evidence with respect thereto may well be relevant to the Board's consideration when a section 11(2) application is made (as in this case), although the focus may well be on the effect such things have on the reliability of a representation vote.

46. In this case, however, I find it unnecessary to determine that question or to examine it further.

47. Among other things, section 76 of the Act prohibits a person or a trade union from using intimidation or coercion to try to compel any person to become a member of a trade union or to refrain from any exercising any other rights under the Act. In this case, I am satisfied that that is precisely what the applicant, primarily through UA Local 221's Business Manager John Telford, has done. The applicant sought to use its power and internal processes over Bruno Battiston, Loris Battiston and Brogno to create membership evidence which was filed in support of this application and to support the application in the representation vote, and it was successful in doing so. In doing so, Telford and the applicant have contravened section 76 of the Act.

48. I am mindful of the fact that construction job sites are neither tea parties nor labour relations laboratories, and that it is unreasonable to expect that employees will not be exposed to various social and other pressures, perhaps severe pressures, in the context of the union organizing campaign (indeed, I have said so in *Bruno Plumbing & Contracting Inc.*, Board File No. 2037-94-R, October 24, 1994, unreported, and, in a non-construction context, in *Can-Eng Metal Treating Ltd.*, [1988] OLRB Rep. May 444). In that respect, employees may find themselves exposed to salesmanship, electioneering or propaganda from those who favour or from those who oppose an application for certification.

49. The Act does not immunize or protect employees from this. Many years ago a "silent period" was tried as part of the certification process and was rejected by the Board as unworkable. The Board does not police etiquette or social relations.

50. However, this does not mean that either a trade union or anyone else can do whatever they wish with respect to an application for certification. The Act protects employees from undue influence by prohibiting everyone from using intimidation or coercion to compel them to support a particular side or to exercise their rights under the Act in a particular way. A trade union enjoys a considerable amount of latitude in the conduct of its affairs generally, and specifically in the way it approaches certification. But a trade union is a law unto itself only within the parameters of the laws which govern everyone in this province, in this case the *Labour Relations Act*. Accordingly, while a trade union has the right to

enforce its constitution and by-laws and to expect that its members will abide by its constitution and by-laws and have regard to both their rights and obligations, that constitution and those by-laws do not take precedence over the Act.

51. In this case, the applicant used its constitution for an improper purpose: to intimidate or coerce Bruno Battiston, Loris Battiston and Brogno into doing something they clearly did not want to do; that is, to support an application for certification of Centro. Bruno Battiston and Brogno resisted the applicant's attempts to intimidate and coerce them for months until the applicant escalated its efforts to the point that they felt they had no alternative and they could no longer resist the UA's threat to their personal and economic well-being in circumstances in which they felt they had no option but to do as Telford and others asked.

52. It was only then that they agreed to sign the membership evidence which got the UA into position to file the application for certification in this case. Similarly, Loris Battiston, Bruno's son, was made aware of what was being done to Bruno Battiston and Brogno, and when Bruno Battiston, who was perceived by everyone involved to be the pivotal one of the three employees, caved in to the applicant's pressure it was inevitable that Loris Battiston would do so as well.

53. In arriving at this conclusion, I have applied an objective test which the Board has long applied in both situations by asking: was it more likely than not that the applicant's conduct was such that a reasonable employee of average intelligence and fortitude would have his/her ability to exercise his/her rights under the Act and to express his/her wishes with respect to being represented by the union in his/her dealings with his/her employer compromised, such that the representation vote taken does not likely reflect the true wishes of the employees in that respect? Applying such an objective test does not mean that the Board cannot have regard to the subjective evidence of the persons effected, and I did so in this case.

54. The applicant approached each of Bruno Battiston, Brogno and Loris Battiston on the job site very soon after each came onto the Kingston jobs as employees of Centro. When Bruno Battiston did not respond favourably to Telford's request for assistance, Telford decided to try to persuade him by applying pressure under the International constitution. First, he told Bruno Battiston he could be charged, then he threatened to charge him, and then he did charge him, first with the less serious but nevertheless significant travel card violation, and then with the very serious "working for a non-union contractor" violation which could have resulted in Bruno Battiston being expelled from membership in the UA. Telford followed the same pattern with Brogno, always also making sure that Bruno Battiston and Brogno knew what was happening to the other as well. Telford began the same pattern with Loris Battiston, although he didn't get to the "working non-union charge" with him, notwithstanding that he telescoped the time frame in which he operated. At every step, as he increased the pressure Telford offered the three employees a way out, and only one way out, that if they would "help" him by certifying Centro he would help them with their problems; namely he would go away and he would make the charges against them go away. This was not a situation in which Telford and the applicant was seeking to enforce to protect the integrity of the UA's constitution and by-laws. If that is all this had been about, and no connection had been made with the employees employment with Centro or the applicant's attempt to certify Centro, there would have been no breach of the Act. But that wasn't the case. Even if part of the motivation was to enforce the UA's internal rules, it is clear that from the beginning the primary motivation was to intimidate and coerce the employees into participating and helping the applicant in its attempt to certify Centro, notwithstanding and without regard to the employees own wishes. This motivation is manifest from the fact that throughout Telford and others told the employees that the charges and even the fine which had already been levied would go away if they gave their "help", from the fact that the fines have never been collected and the UA has no intention of trying to collect them, from the fact that Bruno Battiston and Brogno have been allowed to

pay their dues and are considered to be members in good standing notwithstanding their outstanding fines, from the fact that the UA has no intention of pursuing the working non-union charges, and from Telford's February 12, 1996 letter to UA Local 46.

55. Further, I am satisfied that "helping" the applicant in this case meant both signing the requisite membership documents *and* voting in favour of certification. I reject the assertion of Brogno and the suggestion in Loris Battiston's evidence to the contrary as completely implausible in the circumstances. Helping to certify Centro meant exactly that, and there could be no certification without a vote in favour of the applicant.

56. (I note that little attention was paid in argument to Centro's allegations that the UA had also breached section 87(2) of the Act, a proposition which was arguable (as I ruled early in the proceeding) but quite tenuous. Further, a finding in either direction in that respect would neither affect the result nor add anything useful to this decision. I therefor find it unnecessary to deal with that allegation.)

57. Finally, I am satisfied that no other remedy, including the taking of a further representation vote, would be sufficient to counter the effects of the applicant's contraventions of the Act. In the construction industry, the only persons who are entitled to cast ballots in a representation vote are the employees in the bargaining unit on the day the application is made (*Crete Flooring Group Limited*, [1992] OLRB Rep. July 792). Consequently, the same 5 people who voted the first time would be entitled to vote again. Notwithstanding Brogno's suggestion that no one would know how anyone voted, such a bargaining unit is sufficiently small that a very good guess could be made and I am satisfied that at least Bruno Battiston, Brogno and Loris Battiston have been so affected by the events in this case that their ballots, if cast, could not be taken as a reliable indicator of their true wishes, particularly since they no longer have a connection with Centro, but continue to be members of the UA.

58. The application for certification is therefore dismissed.

VI Board File No. 0110-96-U

59. This brings me to Board File No. 0110-96-U. I have not previously mentioned it because the disposition of this complaint under section 96 of the Act could not affect the disposition of the certification application. The connection between the two matters is that it involves two of the same employees (Brogno and Loris Battiston), as well as two new employees, and Centro. I suppose they were scheduled to be heard together because they involve the same parties and many of the same persons, but it did create certain procedural wrinkles which the parties fortunately took a sensible approach to.

60. The applicant alleges that Centro has breached sections 5, 72 and 86 of the Act. Section 5 provides:

5. Every person is free to join a trade union of the person's own choice and to participate in its lawful activities.

This is a statement of one of the fundamental underlying principles of the Act. It is not an unfair labour practice provision and has never been considered by the Board to be a provision which can be violated in the sense alleged in a section 96 complaint. That is what the unfair labour practice provisions are for and it is those unfair labour practice provisions which protect the right articulated in section 5. Sections 72 and 86(2) (the operative subsection of section 86 for purposes of this complaint), provide that:

72. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

86. (2) Where a trade union has applied for certification and notice thereof from the Board has been received by the employer, the employer shall not, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty of the employer or the employees until,

- (a) the trade union has given notice under section 16, in which case subsection (1) applies; or
- (b) the application for certification by the trade union is dismissed or terminated by the Board or withdrawn by the trade union.

60. The applicant alleges that Brogno and Loris Battiston were hired by Centro at a wage rate of \$27.00 per hour (inclusive of vacation pay) to work 9.5 hours per day and that they were to have their travel, accommodation and meal expenses paid for by the company through a company credit card, and that these were the terms and conditions of employment in effect at the time this application was made and which were in effect at all material times. Centro does not dispute this. The applicant also alleges, that on March 8, 1996 Brogno and Loris Battiston were advised of a unilateral change in these terms and conditions and specifically that Centro would no longer be paying out-of-town employees (which Brogno and Loris Battiston are) their travel or accommodation expenses. Because this change made it impractical for Brogno and Loris Battiston to continue working in Kingston for Centro, they quit. Centro agrees that Brogno and Loris Battiston quit but otherwise joins issue with the applicant with respect to these allegations.

61. Further, the applicant alleges that, on March 11, 1996, two new employees, Mark Eakins and Robert (Kim) Choate were hired by Centro to work in Kingston. The applicant alleges that they were hired at a rate of \$27.00 per hour (inclusive of vacation pay), and that notwithstanding what Brogno and Loris Battiston were told, they were advised that their accommodation would be paid for, that they would receive a \$20.00 per day meal allowance and that they would be provided with transportation to Kingston. The applicant alleges that these two employees were in fact paid only \$25.00 per hour and that there was some problem with their meal allowance.

62. The applicant claims 18 hours (2 days) wages for Brogno and Loris Battiston as damages for the alleged breaches of the Act with respect to them. It also claims the alleged wage differential of \$2.00 per hour for a period of 6 weeks for Choate and a period of 2.5 weeks for Eakins.

VII The Facts

63. The evidence reveals the following. Brogno and Loris were both effectively hired by Bruno (again, it is not disputed that Bruno is an "employee" within the meaning of the Act for the purposes of these proceedings). Bruno Battiston telephoned Brogno one Saturday early in June 1995 and asked that

he would like to work for Centro in Kingston on starting on the following Monday. They agreed that Bruno Battiston would pick Brogno up at his house, but it is not clear whether Bruno did that or Brogno went to Bruno Battiston's house. In any case, after that, Carmine did go to Bruno Battiston's house every Monday morning. At first, they then proceeded to Malfar Mechanical's shop, which it appears Centro was using, where they picked up another employee and then drove to Kingston. Subsequently, they stopped going to the shop and employees simply met at Bruno's house early every Monday morning and drove to Kingston. At first they used a truck which Bruno rented (and was reimbursed for). Subsequently, they used a truck provided by Centro.

64. These employees (and there were other Centro employees at the Kingston sites as well) stayed in Kingston during the week, returning to Toronto on Friday evening or Saturday morning, apparently depending on how Bruno Battiston felt about it. Brogno was paid \$27.00 per hour and all of his travel, accommodations and meal expenses were paid for by Centro. Loris Battiston, who became an employee much later and after the travel pattern was well-established also received \$27.00 per hour and had all of his travel, accommodation and meal expenses paid for by Centro. Because he lives with his father, Bruno Battiston, he left with him for Kingston.

65. At the time the application for certification herein was made, four employees travelled together from Bruno Battiston's house in Toronto to Kingston: Bruno Battiston, Loris Battiston (who lives with Bruno), Brogno (who lives approximately one mile away) and Johnny DeSimone (who lives two houses away from Bruno Battiston).

66. After the representation vote was held in the certification proceeding, Bruno Battiston decided to quit his job with Centro, having obtained new employment with an acquaintance of his at Network Mechanical in Toronto. I reject Bruno Battiston's assertion that he gave two weeks notice to Centro (something which was suggested in an unresponsive answer he gave to a question he was asked by counsel for Centro in chief). His recollection of material events was less than satisfactory, and this assertion is inconsistent with the evidence of Brogno and Loris Battiston and is improbable in the circumstances.

67. On the evidence, it appears that Bruno Battiston grew tired of travelling to and from Kingston, of living an evening away from home during the week, and of the job itself, and that he decided that if he could obtain a job in Toronto he would leave Centro. He told the other employees, including at least Brogno and Loris Battiston, this, although it is not clear when. Bruno Battiston did obtain such a job, with Network Mechanical in March 1996. On or about March 8, 1996, the last day he worked for Centro, he told the company that he quit and he returned Centro's truck and credit card which he had been using to pay for his and other employees out of town expenses. Bruno Battiston went to work for Network Mechanical on March 11, 1996, the Monday after he quit Centro.

68. Brogno and Loris Battiston both said that they too had obtained jobs with Network Mechanical, which they were originally to begin the Monday after that, on March 18, 1996. Accordingly, notwithstanding the lack of communication which they professed in this and other areas, it seems likely that they knew that Bruno was leaving Centro before Centro did. They also clearly knew that they were also going to quit before the travel expenses issue was raised on March 9th or 10th, 1996. Equally clearly, Brogno and Loris Battiston had no intention of advising Centro of their intentions before March 15, 1996 the last day they intended to work for Centro.

69. Nevertheless, the travel issue was raised on March 9th or 10th, 1996. Brogno and Loris Battiston said they met with Cosentino at Centro's office. That seems quite unlikely given that it was a weekend, their professed reluctance to go all the way to Centro's office, and given what they testified was said. Accordingly, I prefer Cosentino's evidence that he spoke to Brogno on the telephone about this and that he had no direct conversation with Loris Battiston on the issue.

70. I find that in that conversation Cosentino told Brogno that Bruno Battiston had quit, which Brogno said he knew, and that Centro had hired a new working foreman. Cosentino testified that he told Brogno that this new foreman would have control of the company truck, and that because he lived in Oakville, Brogno and Loris Battiston would have to meet him at Centro's office on Monday morning to get a ride to Kingston. Brogno and Loris Battiston testified that Cosentino told them they would have to make their own way to Kingston.

71. I am not satisfied that Loris Battiston had any direct conversation with Cosentino on this issue.

72. Cosentino denied that he told Brogno that there had been a change in Centro's policy with respect to travel or any other expenses, or that he said that Brogno and Loris Battiston would have to make their own way to Kingston. He suggested that if they thought that, Brogno must have misunderstood what he said. Perhaps Brogno did misunderstand, but perhaps he and Loris Battiston simply didn't want to be put to the inconvenience of having to go to Centro's office in order to obtain a ride to Kingston for what they intended to be their last week with Centro. In any event, the following Monday, March 11, 1996, Brogno and Loris Battiston drove together in Brogno's car to Kingston, picked up their tools, quit their jobs with Centro, and returned to Toronto. It is apparent that at some point they were in contact with Network Mechanical because their start date was moved up to Wednesday March 13, 1996. In the meantime, Brogno and Loris Battiston did not work. Instead, according to Brogno, they went fishing or the Sportsman's Show in Toronto.

73. Choate and Eakins began their employment with Centro on March 11, 1996. They were interviewed by Cosentino and two other Centro personnel on or about March 6, and received telephone job offers on or about March 7, 1996. They were asked if they could start the following morning, Friday March 8, 1996. However, they did not start until Monday, March 11th. Choate and Eakins worked for Centro in Kingston for 6 and 2 1/2 weeks respectively, it appears.

74. Eakins did not testify. Choate testified that the wage rate which was discussed and which he understood he and Eakins were to receive was \$27.00 per hour (including vacation pay). He denied that there was any discussion of a probationary or trial period, or that Cosentino wanted to see "how they would work out". Cosentino testified that Choate and Eakins were employed at a starting wage rate of \$25.00 per hour which was to increase to \$27.00 per hour if they successfully completed a three month probationary period. The other two Centro personnel at the interview, including the individual who it appears actually telephoned to offer Choate and Eakins employment with Centro, did not testify.

VIII Decision

75. Section 72 of the Act is an unfair labour practice provision which prohibits an employer from dealing with employees or perspective employees in a manner which interferes with their exercise of rights under the Act.

76. Section 86 of the Act is commonly referred to as a "freeze" provision. Section 86(1) applies to established collective bargaining relationships. Section 86(2) operates to prohibit an employer from altering the rates of wages or any other term or condition of employment, or any right, privilege or duty of employees, without the consent of a trade union which has applied for certification with respect to those employees, until the application for certification has been disposed of. Section 86 is a strict liability provision in that such changes need not be improperly motivated to constitute a breach. The purpose of section 86 is to maintain the working conditions and circumstances in place, in the case of section 86(2), when an application for certification is made so that changes which may influence the way in which employees might respond to an application for certification, whether or not intended to have such an effect, are not made to the circumstances of employment of the employees.

77. Although the “freeze” label has stuck, it is somewhat of a misnomer. Section 86(2) could be read to preclude any change to anything which effects employment while an application for certification is proceeding. However, the Board has interpreted section 86 as operating to preserve the pattern of employment rather than specific terms, condition or other circumstances of that employment. Accordingly, section 86(2) does not operate to preclude an employer from continuing to manage its operations in accordance with the established pattern of rights, privileges and duties established in the employment relationship it has with employees who are affected by an application for certification. In *Spar Aerospace Products Limited*, [1978] OLRB Rep. Sept. 859, this was described as a “business as before” approach. However, as the Board’s subsequent jurisprudence demonstrates, this is not always an easy test to apply. Nor does it always lead to an obvious result. For example, the Board has found that the “freeze” provisions do not necessarily apply to preclude first time events (see, for example, *Grey Owen Sound Joint Homes for the Aged*, [1983] OLRB Rep. Apr. 522, and *Corporation of the Town of Petrolia*, [1981] OLRB Rep. Mar. 261). In an attempt to clarify the “business as before” approach, and to accommodate first time events and lengthy “freeze” periods, the Board has developed the objective “reasonable expectations” test, first expressly articulated in *Simpsons Limited*, [1985] OLRB Rep. Apr. 594 (particularly at paragraphs 32 and 33).

78. In the result, the Board has taken a flexible and purposive labour relations approach to the statutory freeze under the Act. It could be argued that section 86 contemplates a more static situation, a “deep freeze” if you will, but the Board’s approach recognizes that employment relationships tend to be affected by and reflect the dynamic nature of business activity, and is more responsive to the variety of situations which exist in the real world. I note as well that the Canada Labour Relations Board has tried and rejected the static or deep freeze approach in favour of a “business as usual approach” (see *Bank of Nova Scotia (Sherbrooke and Rock Forest, Quebec)* (1982) 42 di 398, 82 CLLC ¶16,158; *aff’d sub nom. Bank of Nova Scotia v. Retail Clerks Int’l Union* (1982), 83 CLLC ¶14,007 (Fed C.A.); *Bank of Nova Scotia, Toronto, Ontario* [1982] 2 Can L.R.B.R. 21 (CLR)). The “business as usual” approach has also been applied to statutory freeze legislation in British Columbia, Nova Scotia, Newfoundland and in the United States by the National Labour Relations Board. Finally, the current Act contains a number of significant differences from the previous legislation, but the operative words of section 86 have emerged intact from the Legislature’s review, which suggests that it is appropriate for the Board to continue with the approach it has developed. Since the Legislature must be taken to be aware of the Board’s “freeze” jurisprudence (including more recent decision like *Mohawk Hospital Services Inc.*, [1993] OLRB Rep. Sept. 873 and *Beef Improvement Ontario Incorporated*, [1994] OLRB Rep. April 341), it evidently approves of the “business as usual/reasonable expectations” approach.

79. The applicant did not seriously pursue its section 72 allegations. Nor is there anything before the Board which suggests a breach of that section. With respect to section 86(2), it is clear that any change in Centro’s policy or practice with respect to paying travel and other expenses of employees who travelled to work from Toronto to Kingston would constitute a breach of section 86(2). However, I am not satisfied that Centro did make any changes in that respect, either with respect to Brogno or Loris Battiston or otherwise.

80. I am mindful of the evidence that establishes that Choate and Eakins were hired by Centro before Brogno and Loris Battiston (or Bruno Battiston for that matter) quit their jobs. However, it was not argued by the application and there is nothing in the evidence which suggests that there was any nexus between this and the travel expense issue. There is nothing in the evidence which suggests that Centro was out to penalize Brogno or Loris Battiston, or that employees who resided in Toronto did not continue to provide Toronto employees with transportation to Kingston. I note that the applicant, which bears the onus of establishing the breach alleged, did not ask Choate about this and called no other evidence on the point. Nor does the fact that Brogno and Loris Battiston were asked to meet the new foreman at Centro’s office in order to get a ride to Kingston constitute a breach of section 86(2) in the

circumstances. Even if the arrangement between Bruno Battiston and the other employees could be said to constitute an arrangement between the employees and Centro rather than a personal arrangements between the employees, which I doubt, Brogno and Loris Battiston were expressly told that they could make their own arrangements with the new foreman as well. While it is true that the new foreman did not return Brogno's telephone call to him or otherwise contact them in that respect as Brogno requested, Brogno and Loris Battiston continued to be entitled to be provided with transportation to the Kingston job sites and I am satisfied they would have been had they gone to Centro's office. I am not prepared to read anything into the new foreman's failure to contact them, in the absence of any evidence that suggests that there was anything untoward in that failure.

81. Further, Brogno and Loris Battiston drove to Kingston themselves on Monday March 11, 1996. Perhaps in a fit of pique, or perhaps because they already knew they would be starting a Network on Wednesday March 13, 1996, they went to Kingston only to pick up their tools. Having already incurred the expense, they could have in fact have worked the two days the applicant claims damages for, or the whole week for that matter. Instead, they chose to leave and amuse themselves fishing or at the Sportsman's Show. In these circumstances I would not have awarded Brogno or Loris Battiston the damages claimed even if I had found a breach of section 86 of the Act because those damages could easily have been mitigated.

82. I come to a different conclusion in the case of Choate and Eakins. Choate was a credible witness. Cosentino was less so, and I infer from Centro's failure to call as witnesses either of the two company people who were present at the interview that their evidence would not have corroborated Cosentino's testimony.

83. Section 86(2) does not necessarily operate to preclude an employer from hiring new employees at wage rates or subject to terms and conditions different from those of existing employees, although it may do so. Whether or not it does will depend on the particular case. In this case, however, the evidence suggests that all journeymen plumbers, which Choate and Eakins were on the evidence, began work at a wage rate of \$27.00 per hour. Further, there is no evidence that any other employee had to go through any probationary or trial period, and however common it may be elsewhere, such periods are not common in the construction industry. Accordingly, I accept Choate's evidence and I find that Choate and Eakins were hired at a wage rate of \$27.00 per hour but were paid only \$25.00 per hour. Choate and Eakins were therefore entitled to be paid the wage differential as damages. In Choate's case, this amounts to \$480.00. Eakins is entitled to \$200.00. There is no evidence which establishes any other breach of the Act with respect to Choate or Eakins. In that respect, Choate was asked no questions about the meal allowance issue, and the pay slips which were entered into evidence do not establish that he did not have his meals or accommodation's paid for.

82. In the result, the complaint in Board File No. 0110-96-U is allowed in part. In that respect, the Board:

(a) declares that Centro Mechanical Inc. has breached section 86(2) of the *Labour Relations Act, 1995* by changing the wage rate it agreed to pay Robert Choate and Mark Eakins and paying them \$2.00 per hour less than agreed;

(b) orders Centro Mechanical Inc. to pay to the applicant, in trust for Choate and Eakins, as damages for the said breaches of section 86(2) of the Act, \$480.00 and \$200.00, less the applicable statutory deductions, respectively. Choate and Eakins are also entitled to interest on these damages, in accordance with sections 127 through 129 of the *Courts of Justice Act*.

3731-95-M Ontario Public Service Employees Union, Applicant v. The Crown in Right of Ontario Represented by Management Board of Cabinet, Responding Party v. Association of Management, Administration and Professional Crown Employees of Ontario (AMAPCEO), Intervenor

Crown Employees Collective Bargaining Act - Employee - Interim Relief - Remedies - Union applying to have Board determine whether certain persons should be excluded from its bargaining units as result of Bill 7 changes to Crown Employees Collective Bargaining Act - Union also asking for interim order that disputed individuals not be excluded pending Board's determination of the issue - Board considering its jurisdiction to make interim orders and concluding that Bill 7 amendments only give Board power to make interim orders dealing with conduct of proceedings and related matters - Board also concluding that Statutory Powers Procedure Act ("SPPA") granting Board general power to grant interim orders and that that power prevails over conflicting provision in Labour Relations Act - Board indicating that it will exercise its SPPA interim order jurisdiction (where discharges and reinstatement requests are not in issue) in a manner similar to the approach previously utilized by the Board prior to Bill 7 - Board denying interim order request here because harm in granting or withholding interim order evenly balanced and because of union's stated inability to commence an adjudication on the merits for some considerable period

BEFORE: *Robert Herman*, Alternate Chair, and Board Members *R. W. Pirrie* and *P. V. Grasso*.

APPEARANCES: *Donald K. Eady*, *Barbara Linds* and *Eileen Wesley* for the applicant; *D. Brian Loewen*, *Anna Hoad*, *Ed Farragher* and *Lorey Simpson* for the responding party; *Gary Gannage*, *Steven Barrett*, *Cynthia Petersen*, *Gary Hopkinson* and *Janet Ballantyne* for the intervenor.

DECISION OF ROBERT HERMAN, ALTERNATE CHAIR, AND BOARD MEMBER P. V. GRASSO; October 7, 1996

Background

1. This is an application for interim relief brought by the applicant, Ontario Public Service Employees Union (OPSEU), relying upon the provisions of section 98 of the *Labour Relations Act, 1995* (the "Act") and 16.1 of the *Statutory Powers Procedure Act* ("SPPA"). It raises the question as to the Board's jurisdiction, and approach, under the new interim relief section in the Act, and under the SPPA. This matter was heard on January 31 and February 1, 1996. In a short decision issued February 5, 1996, the Board unanimously decided that no interim relief would issue, with our reasons to follow at a later date. We now provide those reasons.

2. OPSEU is the bargaining agent with respect to six of the seven bargaining units, established by order of the Lieutenant Governor in Council, covering employees with the provincial Crown. The bargaining agent with respect to the seventh bargaining unit is the intervenor, the Association of Management, Administration and Professional Crown Employees of Ontario (AMAPCEO). Indeed, AMAPCEO initially filed its own applications, an application under section 114(2) of the *Labour Relations Act, 1995*, and a companion request for interim relief, both similar in kind to the applications filed by OPSEU. However, the three parties agreed that AMAPCEO would not proceed with its interim application, but would be added as an intervenor, with full participation rights, in the instant application.

3. The "merits" application (Board File No. 3730-95-M) is an application by OPSEU brought pursuant to section 114(2) of the *Labour Relations Act, 1995*. That section reads as follows:

(2) If, in the course of bargaining for a collective agreement or during the period of operation of a collective agreement, a question arises as to whether a person is an employee or as to whether a person is a guard, the question may be referred to the Board and the decision of the Board thereon is final and conclusive for all purposes.

4. The application arises out of a dispute over the interpretation and application of new criteria for excluding employees from coverage under the *Crown Employees Collective Bargaining Act, 1993* ("CECBA"). Specifically, pursuant to section 13 of Bill 7, section 1.1(3) was added to CECBA. This section reads as follows:

(3) This Act does not apply with respect to the following:

• • •

9. Employees exercising managerial functions or employed in a confidential capacity in relation to labour relations.
10. Persons employed in a minister's office in a position confidential to a minister of the Crown.
11. Persons employed in the Office of the Premier or in Cabinet Office.
12. Persons who provide advice to Cabinet, a board or committee composed of ministers of the Crown, a minister or a deputy minister about employment-related legislation that directly affects the terms and conditions of employment of employees in the public sector as it is defined in subsection 1 (1) of the *Pay Equity Act*.
13. Persons who provide advice to Cabinet, a board or committee composed of ministers of the Crown, the Minister of Finance, the Chair of Management Board of Cabinet, a deputy minister in the Ministry of Finance or the Secretary of the Management Board of Cabinet on any matter within the powers or duties of Treasury Board under sections 6, 7, 8 or 9 of the *Treasury Board Act, 1991*.
14. Persons employed in the Ontario Financing Authority or in the Ministry of Finance who spend a significant portion of their time at work in borrowing or investing money for the Province or in managing the assets and liabilities of the Consolidated Revenue Fund, including persons employed in the Authority or the Ministry to provide technical, specialized or clerical services necessary to those activities.
15. Other persons who have duties or responsibilities that, in the opinion of the Ontario Labour Relations Board, constitute a conflict of interest with their being members of a bargaining unit.

5. Section 67 of Bill 7, dealing with the effective date of some of the amendments, reads in part as follows:

67. (1) This section applies with respect to bargaining units that include, on the day this section comes into force, persons to whom the old Act applied but to whom the new Act does not apply.

(2) A trade union that is the bargaining agent for employees in a bargaining unit that includes persons described in subsection (1) ceases to represent those persons 90 days after this section comes into force, and they cease to be members of the bargaining unit.

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6. The effective date of the exclusions was February 8, 1996. Because of these amendments, the parties had a number of meetings to discuss the operation of the new exclusionary criteria and their application to particular individuals. OPSEU and the Crown, represented by Management Board of Cabinet, were in dispute over approximately 300 positions. The Crown maintained that these positions were to be excluded by the new amendments, and OPSEU asserted that the positions properly remained covered by *CECBA*, and therefore the employees remained members of one of the OPSEU bargaining units. All of these discussions took place in the context of the then pending strike by OPSEU. While OPSEU members had not yet held a strike vote, it was clear by early February that a strike might be imminent.

7. In terms of the merits, the Crown asserts that the employees to be excluded work in Cabinet Office, the Premier's Office, the Public Appointments Secretariat, Management Board, the Ontario Financing Authority, and the Ministry of Finance - Controllorship and Taxation Data branches.

8. OPSEU does not challenge the proposed exclusion of employees working in Cabinet Office or in the Office of the Premier. It does however dispute the individuals sought to be excluded who work in the Public Appointments Secretariat, and it disputes the purported exclusion of certain individuals working in the Program Management and Estimates Division of Management Board Secretariat. By far the largest category of employees in dispute between the parties are those who work for the Ontario Financing Authority, most employed by the Province of Ontario Saving Office ("POSO"). As OPSEU put it, most of the people sought to be excluded are customer service representatives (bank tellers) performing clerical functions which have nothing to do with the statutory basis for exclusion; that is, those "who spend a significant portion of their time at work in borrowing or investing money for the Province or in managing the assets and liabilities of the Consolidated Revenue Fund ..." (cf. *CECBA*, s. 1.1(3)14).

9. As the parties were not able to resolve these disputes themselves, OPSEU and AMAPCEO filed the applications referred to above, both the "merits" application filed pursuant to section 114(2) of the Act, and the instant application for interim relief in support thereof. In the interim application, OPSEU asks that the Board order that none of the challenged exclusions be excluded pending a decision on the merits. In response to these applications, the Crown took the position that the Board did not technically have jurisdiction under section 114(2) of the Act to consider the application, as the issue here does not raise a question as to whether a person is an employee or not, which question gives the Board jurisdiction under section 114(2), but only raises the question of whether a particular person or employee is now excluded from the applicability of the provisions of *CECBA*. The Crown noted that neither *CECBA* nor the *Labour Relations Act, 1995* give the Board jurisdiction to deal with such a question. Nevertheless, the Crown consented to the Board dealing with the merits in the main application, on the basis that the parties need a resolution of the dispute, the Board is the appropriate adjudicative forum, and there is no apparent alternative available to the parties. The Crown does not, however, consent to the Board dealing with the dispute on an interim basis, pursuant to section 98 of the *Labour Relations Act, 1995* or section 16.1 of the *Statutory Powers Procedure Act*.

The Legislation

10. It is helpful to set out the legislation dealing with interim relief that was contained in Bill 40. Section 92.1 of Bill 40 read as follows:

92.1-(1) On application in a pending or intended proceeding, the Board may grant such interim orders, including interim relief, as it considers appropriate on such terms as the Board considers appropriate.

11. Subsequent to the passage of section 92.1 in Bill 40, the Legislature amended the *Statutory Powers Procedure Act*, to add the following sections:

16.1 - (1) A tribunal may make interim decisions and orders.

(2) A tribunal may impose conditions on an interim decision or order.

(3) An interim decision or order need not be accompanied by reasons.

17. A tribunal shall give its final decision and order, if any, in any proceeding in writing and shall give reasons in writing therefor if requested by a party.

(2) A tribunal that makes an order for the payment of money shall set out in the order the principal sum, and if interest is payable, the rate of interest and the date from which it is to be calculated.

12. As well, section 32 of the *Statutory Powers Procedure Act* reads as follows:

32. Unless it is expressly provided in any other Act that its provisions and regulations, rules or by-laws made under it apply despite anything in this Act, the provisions of this Act prevail over the provisions of such other Act and over regulations, rules or by-laws made under such other Act which conflict therewith.

13. All of Bill 40 was repealed by Bill 7, including section 92.1, and the *Labour Relations Act, 1995* now includes the following section:

98. (1) On application in a pending proceeding, the Board may make interim orders concerning procedural matters.

(2) The Board shall not make an order under subsection (1) requiring an employer to reinstate an employee in employment.

14. Neither in section 98 or elsewhere did the Legislature provide that the provisions of section 98 were to apply despite anything in the *SPPA*.

The Board's Jurisdiction under section 98 of the Labour Relations Act, 1995

15. There were no background materials put before us to aid in our interpretation, and reference by the parties was made only to the Act, the prior provisions in Bill 40, and the *SPPA*. The Crown's primary argument is that section 98(1) only confers upon the Board powers to "make interim orders concerning procedural matters", and "procedural matters" are orders that touch only upon "procedural" issues. For example, asserts the Crown, this section gives the Board the power to make interim directions with respect to which parties proceed first, whether parties must produce documents or other material, whether parties must file certain particulars, and so on.

16. One difficulty with this interpretation of subsection 1 of section 98, and more specifically the phrase "concerning procedural matters" contained therein, is that all of these powers, and other similar "procedural" ones, are already contained elsewhere in the Act. Indeed, when Bill 40 was the law, the Board commented on its pre-existing ability to make (for example) production orders without resort to a specified interim power: see *Highland York Flooring Company Limited* [1993] OLRB Rep. July 607. In section 111(2) of the Act, the Board is given the power, for example:

- (a) to require any party to furnish particulars before or during a hearing;
- (b) to require any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing;
- (c) to summon and enforce the attendance of witnesses and compel them to give oral or

written evidence on oath, and to produce the documents and things that the Board considers requisite to the full investigation and consideration of matters within its jurisdiction in the same manner as a court of record in civil cases;

- (d) to administer oaths and affirmations;
- (e) to accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not;
- (f) to require persons or trade unions, whether or not they are parties to proceedings before the Board, to post and to keep posted upon their premises in a conspicuous place or places, where they are most likely to come to the attention of all persons concerned, any notices that the Board considers necessary to bring to the attention of such persons in connection with any proceedings before the Board;
- (g) to enter any premises where work is being or has been done by the employees or in which the employer carries on business, whether or not the premises are those of the employer, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any matter and post therein any notice referred to in clause (f);
- (h) to enter upon the premises of employers and conduct representation votes, strike votes and ratification votes during working hours and give such directions in connection with the vote as it considers necessary;

• • •

17. When invited to suggest an example of a “procedural” matter that the Board would be without jurisdiction to order, but for the provisions of section 98(1) of the Act, the Crown was unable to do so.

18. It is also instructive to refer to the wording of section 98(2) of the Act in considering the meaning of section 98(1). Section 98(2) reads as follows:

(2) The Board shall not make an order under subsection (1) requiring an employer to reinstate an employee in employment.

19. Here the legislative intention seems clear: the Board is not to make an interim order which “require[s] an employer to reinstate an employee in employment”. What is instructive is that subsection (2) notes that the Board “shall not make an order under subsection (1)” to this effect. It follows that such an order of reinstatement would, but for subsection (2), arguably fall within the ambit of subsection (1), at least in the view of the legislative draftsman. This wording in subsection (2) might seem to suggest that orders under subsection (1) are not limited to strictly “procedural” matters, at least as so characterized by the Crown, but extend to the way parties must interact or behave in the workplace pending a “final” determination in the proceeding before the Board. To similar effect is the marginal note beside subsection (2), which says “exception”, buttressing the point that the restriction set out in subsection (2) is a restriction upon the Board’s authority otherwise contained in section 98(1).

20. Section 98(1) does not contain a specified power to issue “interim relief”, as was contained in its predecessor, section 92.1, but only to grant “interim orders”. The significance of this change is not clear. One might argue that the elimination of the power to grant “relief” by way of interim order suggests that the Legislature did intend to restrict the sorts of interim orders that the Board had been granting under Bill 40, that the word “relief” contains an aspect of “remedy” or “remedial direction” within it, while the word “order” does not. This argument is not particularly persuasive when one compares the language and ambit of section 98 to section 99, where one finds that the term “interim order” includes both “remedial” and substantive features.

21. Section 99 of the Act reads as follows:

99. (1) This section applies when the Board receives a complaint,

- (a) that a trade union or council of trade unions, or an agent of either was or is requiring an employer or employers' organization to assign particular work to persons in a particular trade union or in a particular trade, craft or class rather than to persons in another;
- (b) that an employer was or is assigning work to persons in a particular trade union rather than to persons in another; or
- (c) that a trade union has failed to comply with its duties under section 74 or 75.

(2) A complaint described in subsection (1) may be withdrawn by the complainant upon such conditions as the Board may determine.

(3) The Board is not required to hold a hearing to determine a complaint under this section.

(4) Representatives of the trade union or council of trade unions and of the employer or employers' organization or their substitutes shall promptly meet and attempt to settle the matters raised by a complaint under clause (1)(a) or (b) and shall report the outcome to the Board.

(5) The Board may make any interim or final order it considers appropriate after consulting with the parties.

(6) In an interim order or after making an interim order, the Board may order any person, employers' organization, trade union or council of trade unions to cease and desist from doing anything intended or likely to interfere with the terms of an interim order respecting the assignment of work.

(7) When making an order or at any time after doing so, the Board may alter a bargaining unit determined in a certificate or defined in a collective agreement.

(8) If a collective agreement requires the reference of any difference between the parties arising out of work assignment to a tribunal mutually selected by them, the Board may alter the bargaining unit determined in a certificate or defined in a collective agreement as it considers proper to enable the parties to conform to the decision of the tribunal.

(9) Where an employer is a party to or is bound by two or more collective agreements and it appears that the description of the bargaining unit in one of the agreements conflicts with the description of the bargaining unit in the other or another of the agreements, the Board may, upon the application of the employer or any of the trade unions concerned, alter the description of the bargaining units in any such agreement as it considers proper, and the agreement or agreements shall be deemed to have been altered accordingly.

(10) A party to an interim or final order may file it, excluding the reasons, in the prescribed form in the Ontario Court (General Division) and it shall be entered in the same way as an order of that court and is enforceable as such.

(11) An order that has been filed with the court is enforceable by a person, employers' organization, trade union or council of trade unions affected by it and is enforceable on the day after the date fixed in the order for compliance.

(12) A person, employers' organization, trade union or council of trade unions affected by an interim order made by the Board under this section shall comply with it despite any provision of this Act or of any collective agreement relating to the assignment of the work to which the order relates.

(13) A person, employers' organization, trade union or council of trade unions who is complying with an interim order made by the Board under this section is deemed not to have violated any provision of this Act or of any collective agreement.

(emphasis added)

22. This is a new section in the Act, and at least in part can find its antecedents in the Act as it existed prior to Bill 40, and in Bill 40 itself. For example, under Bill 40, the Board was given the power to consider and deal with jurisdictional disputes (Bill 40, s. 93) by way of "consultation", and to make interim orders in such a proceeding or process. In the new Act, the Board's ability to consult and make interim "orders" is expanded to other types of complaints (i.e. section 74 and 75 complaints). Through section 99(5), the Board is given the power in dealing with such matters to "make any interim or final order it considers appropriate" after consulting. The language of section 99(5) is identical to that in Bill 40 (section 93(1.2)), except that the predecessor section granted interim powers after an inquiry as well as after a consultation.

23. Subsection (6) of section 99 states that an interim "order" can be in the nature of a "cease and desist" order (hardly a procedural matter that regulates a proceeding). Along with final orders, an interim "order" can be filed in the Ontario Court (General Division) and is then enforceable as such (section 99(10)). Section 99(12) states that interim orders issued under section 99 take precedence over provisions in the Act or a collective agreement which relate to the assignment of the work to which the interim order relates.

24. As is evident, substantive interim "orders" can issue under section 99, notwithstanding the use of the noun "order", rather than "relief". It is difficult, given this language, to argue convincingly that the use of the word "orders" in section 98(1), and the deletion from Bill 40 of the word "relief", in reference to the interim power, demonstrates a legislative intention that the section 98 interim power have no remedial aspect, but is meant only to authorize the granting of lesser "orders".

25. What is of significance is that the express power to grant interim orders in section 99 is not modified by the adjective "procedural", as it is in section 98. The unmodified interim power granted in section 99(5) suggests that there is an intentional restriction on the interim power in section 98, that the authority granted there is limited to "procedural matters". And of course, the section 98 interim power applies to proceedings brought under section 99, even though it is difficult to posit an interim order the Board could make under section 99 (or section 111(2)) that it could not make but for section 98 (other than interim orders that are made when the Board has not first consulted with the parties).

26. Thus, the juxtaposition of sections 98 and 99 and the different language used therein, does suggest that the Legislature intended section 98 to be a grant of interim power different in kind than that granted in section 99, and that it intended the authority under section 98 to be limited to matters that are procedural (i.e. deal with the conduct of the proceeding).

27. This interpretation of section 98 does render the section somewhat redundant as a *grant* of power, and the words used in section 98 may not be the clearest expression of this purpose. Both of these points have been canvassed above. But this interpretation appears to reflect the intention of the Legislature in passing section 98. It is in looking at the history of the section, its language, and the other grants of the interim power in the Act that this interpretation seems the most likely.

28. Further buttressing this interpretation are the new provisions setting out the powers of *arbitrators* to make interim orders. Sections 48(12) and (13) read as follows:

48. 12) An arbitrator or the chair of an arbitration board, as the case may be, has power,

- (a) to require any party to furnish particulars before or during a hearing;
- (b) to require any party to produce documents or things that may be relevant to the matter and to do so before or during the hearing;
- (c) to fix dates for the commencement and continuation of hearings;
- (d) to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath in the same manner as a court of record in civil cases; and
- (e) to administer oaths and affirmations,

and an arbitrator or an arbitration board, as the case may be, has power,

- (f) to accept the oral or written evidence as the arbitrator or the arbitration board, as the case may be, in its discretion considers proper, whether admissible in a court of law or not;
- (g) to enter any premises where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the differences submitted to the arbitrator or the arbitration board, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any such thing or any of such differences;
- (h) to authorize any person to do anything that the arbitrator or arbitration board may do under clause (g) and to report to the arbitrator or the arbitration board thereon;
- (i) to make interim orders concerning procedural matters;
- (j) to interpret and apply human rights and other employment-related statutes, despite any conflict between those statutes and the terms of the collective agreement.

(13) *An arbitrator or the chair of an arbitration board shall not make an interim order under clause (12)(i) requiring an employer to reinstate an employee in employment.*

(emphasis added)

29. The language of sections 48(12)(i) and (13) is virtually identical to the relevant language in section 98(1) and (2). The *SPPA* does not apply to arbitrators under the Act, and unlike the Board, arbitrators must find their authority solely within the *Labour Relations Act, 1995*. Section 48(12) speaks generally to the grant of powers to arbitrators to conduct hearings (and to apply certain statutes cf.s. 48(12)(j)). When one looks at sections 48(12) and (13) in this context, it appears as if these sections are intended to grant arbitrators the power to run hearings and to direct the conduct of the parties in the proceeding, not the conduct of the parties in the workplace unrelated in any way to the conduct of the proceeding. As the language in section 48(12) and (13) is so similar to the language in section 98(1) and (2), any interpretation of section 98(1) that concluded that the Board's power contained therein was substantially greater than orders dealing with matters of procedure would logically also govern arbitrators' powers. But it is difficult to interpret sections 48(12)(i) and (13) as granting arbitrators the right to make a wide variety of orders that govern workplace conduct and rights pending a final decision. Such an interpretation would no doubt be surprising to the arbitration community.

30. The wording of section 98 is somewhat ambiguous, but on balance we conclude that the Legislature intended in enacting section 98 that the Board only issue interim orders dealing with "procedural matters", that is, the conduct of the proceeding and related matters.

31. This conclusion, however, does not end our inquiry.

Jurisdiction under the Statutory Powers Procedure Act

32. The Board also has a separately-founded interim order authority under the *SPPA*. OPSEU and AMAPCEO submit that under the provisions of section 16.1 of the *SPPA*, the Board has the full range of interim powers that it enjoyed prior to the repeal of Bill 40 and the passage of section 98 of Bill 7. It will be easier to follow our analysis if we set out again the provisions of sections 16.1, 17 and 32 of the *Statutory Powers Procedure Act*:

16.1 - (1) A tribunal may make interim decisions and orders.

(2) A tribunal may impose conditions on an interim decision or order.

(3) An interim decision or order need not be accompanied by reasons.

17. A tribunal shall give its final decision and order, if any, in any proceeding in writing and shall give reasons in writing therefor if requested by a party.

(2) A tribunal that makes an order for the payment of money shall set out in the order the principal sum, and if interest is payable, the rate of interest and the date from which it is to be calculated.

• • •

32. Unless it is expressly provided in any other Act that its provisions and regulations, rules or by-laws made under it apply despite anything in this Act, the provisions of this Act prevail over the provisions of such other Act and over regulations, rules or by-laws made under such other Act which conflict therewith.

33. As will be seen, section 16.1 gives all tribunals to which the *SPPA* applies, an independent authority to make interim decisions and orders; moreover, pursuant to section 32, should there be any conflict between provisions of the *SPPA* and other provincial statutes, the provisions of the *SPPA* are to prevail (in this regard, see *Thompson and Lambton County Board of Education*, [1972] 3 O.R. 889, upheld on appeal at [1973] 1 O.R. 766). Section 110(21) of the Act (newly enacted in Bill 7) is an example of such "override":

110. (21) Rules made under subsection (18) apply despite anything in the *Statutory Powers Procedure Act*.

34. There is no dispute that the provisions of the *SPPA* apply to the Board, unless explicitly exempted in the *Labour Relations Act, 1995*, as was done in section 110(21). OPSEU and AMAPCEO thus argue that the effect of any limitation on interim powers contained in section 98 of the Act cannot stand in the face of the generally unlimited jurisdiction to grant interim relief granted to tribunals, such as the Board, in section 16.1 of the *SPPA*. Section 16.1 overrides or subsumes any limitations on interim powers in section 98. The Legislature must be taken to have been aware of the *SPPA* at the time it passed Bill 7, submit OPSEU and AMAPCEO, both because of the general presumption to this effect, and because the new section 110(21) it enacted explicitly recognizes the *SPPA*, and states that certain rules made under section 110 are to apply "despite anything in the *Statutory Powers Procedure Act*." It must follow, they argue, that the *Labour Relations Act, 1995* was passed with an actual awareness of the content and meaning of the *SPPA*.

35. One of the Crown's arguments in response is that section 16.1 of the *SPPA* only deals with "procedural" powers, only granting tribunals the authority to make interim orders of a "procedural" or "process" nature. This argument replicates the Crown's argument as to the meaning of the word "procedural" in section 98 of the Act.

36. However, the word “procedural” is not found in section 16.1 of the *SPPA*, and as with the *Labour Relations Act, 1995*, there are found elsewhere in the *SPPA* specific “process” powers. To read the unrestricted “interim” power in section 16.1 as so limited would render the section largely redundant. As well, section 16.1(2) empowers a tribunal to “impose conditions on an interim decision or order”. It appears even less likely that the “interim orders” envisaged in section 16.1 were only of a “process” nature, given this explicit power to attach conditions to such orders. This linkage suggests orders of a more significant nature than merely running a hearing. We note also that section 16.1 authorizes the making of interim “decisions”, not only “orders”, further buttressing the argument that a tribunal can make substantive decisions on an interim basis under section 16.1.

37. On balance, it appears to us that section 16.1 of the *SPPA* gives jurisdiction to tribunals, including this one, to make decisions or orders on an interim basis that relate to or derive from the tribunal’s general or overall jurisdiction. Provided the tribunal acts generally within its jurisdiction, it has a largely unfettered discretion to make interim “decisions or orders” that it has the jurisdiction to make on a final basis, after a hearing on the merits, or that it considers necessary in order to ensure that the statutory rights it deals with are protected until a final decision issues.

Reconciling section 98 of the Act and section 16.1 of the SPPA

38. Given this conclusion, the Board’s powers granted under section 16.1 of the *SPPA* would appear inconsistent with the far more restrictive interim powers granted under section 98 of the Act. The two cannot stand together, and do not merely overlap. The former grants a general jurisdiction to grant interim orders, while the latter grants the authority to make interim orders that deal with the conduct of the proceeding only.

39. Since there is an inconsistency between the two statutory provisions, we must have resort to section 32 of the *SPPA*, the override provision. While the application of that section does not depend on awareness of its content, it must be taken that the Legislature was fully cognizant of the *SPPA* and its override provisions, since it explicitly exempted the application of the *SPPA* in section 110(21) of the Act. The Legislature did not, however, direct that the provisions of section 98 of the Act were to apply despite the *SPPA*. Under section 32 of that Act, therefore, the provisions of the *SPPA* (here, section 16.1) prevail over the provisions of the *Labour Relations Act, 1995* (section 98), since the two provisions conflict.

40. We conclude in the result that the Board has a general power to grant interim orders, as long as the orders are within or relate to the Board’s general jurisdiction.

The Board’s Approach to Considering Interim Orders or Decisions

41. We must now consider the issue of the approach to bring to questions of interim relief under section 16.1 of the *SPPA*.

42. To answer this, it is helpful to describe the approach that the Board took to dealing with interim relief up until the legislative amendments. Generally speaking, the Board began by adopting a two-step approach, first assessing whether the application set out an arguable case for the relief requested, and if so, balancing the harm that would result from granting the relief requested against the harm that would flow if the relief was not granted. (see, for example, *Loeb Highland*, [1993] OLRB Rep. Mar 197; *Tate Andale Canada Inc.*, [1993] OLRB Rep. Oct. 1019; *Vistamere Retirement Residence*, [1994] OLRB Rep. Sept. 1274.) That approach derived from the statutory context, as it is the statutory mandate which guides all Board administrative and adjudicative decisions. The Board looked to the rights and obligations in its constituent statute (then Bill 40), and was guided and directed by the charge placed upon it by the Legislature.

43. As the Board gained more experience in dealing with applications for interim relief, as it confronted more factual contexts in which such relief was sought, it became apparent that there were many factors that the Board ought to, and did, consider in determining whether to issue relief. Factors that were significant included the delay in filing the application (for example: *Morrison Meat Packers Ltd.* [1993] OLRB Rep. Apr. 358), the stage of the relationship or the underlying dispute (*Fort Erie Duty Free Shoppe Inc.* [1993] OLRB Rep. Dec. 1307), the nature of the particular work site or sector and a consideration of how the relative harm to the parties will impact in the specific context (*Price Club* [1993] OLRB Rep. July 635), and whether granting an interim order would have, in the circumstances, effectively determined the substantive issues between the parties (*Fort Erie Duty Free Shoppe*, *supra*).

44. As can be seen, *Loeb Highland* represented the beginning of an evolutionary approach that still continues. As the Board phrased it in *Ombudsman Ontario* [1994] OLRB Rep. July 885:

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9. The Board's approach to interim relief applications has been to avoid as much as possible prejudicing the merits of the main application (which in the case of an "intended proceeding" may not even be formally before the Board). However, there will inevitably be some connection between the interim application and the main application such that some assessment of at least the apparent merits of the main application must inevitably be made.

10. In the result, a two-pronged "test" has emerged in the Board's interim relief jurisprudence to date. First, assuming the applicant's assertions to be true, is there an arguable breach of the *Labour Relations Act* (or presumably any other legislation with respect to which the Board plays an adjudicative role) for which there is a remedy which the Board is arguably empowered to give? Second, if so, does the balance of *labour relations* harm favour the granting of interim relief?

11. In *Tate Andale Canada Inc.*, *supra*, the Board observed, in paragraph 52, that:

"... where the employer bears the legal onus of establishing that it has *not* contravened the Act, it is hardly surprising that the union request that the "pre-discharge" status quo be maintained until the employer meets the statutory onus cast upon it. If the employer is obliged to establish that its removal of the employees from the workplace was *not* unlawful, there is nothing counter-intuitive about keeping them there until it does so ..."

(emphasis added)

This comment must be read in the context of the situation before the Board in that case; namely, the discharge during an organizing campaign of employee organizers, and not as a suggestion that the onus in interim proceedings necessarily lies with the party which bears the onus in the main application - which may not even have been brought. There is nothing which absolutely prohibits discharges or layoffs prior to certification, before a first collective agreement, or between collective agreements. Nor is there anything which requires that a discharged or laid off employee must be reinstated on an interim basis in such circumstances.

12. The two-pronged test developed by the Board suggests that at least the initial onus is on an applicant for interim relief to satisfy the Board that interim intervention is appropriate. Consequently, an applicant must plead an arguable or *prima facie* case. This is not a particularly onerous hurdle since an applicant should be able to describe its allegations in a manner which suggests that it may have something to complain about. Further, an applicant must establish that interim relief is appropriate; namely, that it will suffer some substantial labour relations harm unless the Board intervenes pending the disposition of the application it has pleaded on its merits. This is not terribly onerous either, since it only requires an applicant to explain why it seeks interim relief and what labour relations harm will occur if it does not obtain the interim relief it seeks. In determining whether interim relief is appropriate, the Board also looks to the responding party's assertion of harm to see whether there is any countervailing labour relations harm which makes interim relief inappropriate. That is, the Board weighs the respective harms and assesses whether interim relief is appropriate.

13. Because of the wide variety of proceedings and circumstances in which interim relief may be sought, a flexible approach to the two-pronged test is indicated, so that the appropriate labour relations result may be achieved in each case.

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(And see *Westbury Howard Johnson Hotel* [1994] OLRB Rep. Aug. 1166 where the Board also assessed the relative merits of the parties' positions and arguments, and not only whether the applicant had pleaded an arguable case.)

45. It is difficult to attempt to list the myriad factors that the Board considers when dealing with applications for interim relief, for one can fairly describe the approach as an attempt to take into account all the relevant circumstances, including, as *Ombudsman* indicates, the interests of the responding party. Those circumstances include a consideration of the nature of the specific remedy sought, and the fact that an interim order is an extraordinary remedy and ought not to be granted without consideration for the appropriateness of granting such relief before a hearing on the merits. Interim intervention in a bargaining relationship, or a potential one, may itself bring negative consequences for the relationship between the parties. Thus, the Board on occasion has dealt with applications of this nature by deferring consideration of the interim application and scheduling the merits to be heard in an expedited fashion.

46. Should this approach be changed now? Should the Board adopt an approach different in nature because we now exercise our power under the *SPPA*, and because of the restriction contained within section 98(2) of the Act?

47. Turning first to the effect of section 98(2) of the Act (which as noted above, has not affected the Board's *jurisdiction*), the short answer is that the question of whether the Board ought ever to reinstate an employee to employment on an interim basis does not fall to be resolved in the instant case. No discharges are part of the factual context before the Board, and resolution of this difficult issue is best left to a case in which it arises, where the parties before the Board will have full opportunity to argue the point, and where the Board will have the benefit of a context in which to assess how best to respect the legislative intention expressed in both statutes.

48. Where discharges and reinstatement requests are not in issue, should the Board continue with the approach begun in *Loeb Highland*? The approach that the Board has heretofore adopted did arise under a different statutory context, the *Labour Relations Act* as it then was, and was developed with deference to and derivation from that statutory regime. That statute has now changed in some fundamental respects. And the power we exercise in this area, beyond orders dealing with the conduct of the proceeding, is now founded on a jurisdiction granted under a statute of general application.

49. Nevertheless, we consider it appropriate to exercise our jurisdiction in this area in a manner similar to the approach previously utilized by the Board. Although our authority now derives from a statute of general application, the general interim power granted to the Board, and other tribunals, through the *SPPA*, is in our view a plenary authority to make interim orders that are related to the tribunal's constituent statute, and the rights, obligations and duties contained therein.

50. The *SPPA* does not give a tribunal a general inherent power to make interim orders of any nature and for any purpose. It gives an interim power that is not defined within the *SPPA*, but which must be exercised in a manner responsive to and with a view towards the purpose, function and powers of the tribunal in question, as defined by the statutory enactment setting up or regulating the tribunal. It is still to the *Labour Relations Act* (now the new Act) that the Board must look to give it guidance as to how it ought to exercise any interim relief powers that it might have. This remains true where the power itself is granted elsewhere. The defining of and the parameters of that power reside in the *Labour Relations Act, 1995*.

51. When we look to the Act, many of the statutory rights that led the Board to develop its previous approach to the exercise of its interim powers still exist. The section numbers may have changed, but there still remains, for example, the right of employees to exercise their rights under the Act, and employee rights continue to include the right to support or oppose a union, to join or not to join a union, to be active or be passive in the determination of the issues, and to be free from undue influence in the exercise of their rights. Unions still enjoy the right to seek to represent employees, free from any unlawful interference by an employer, or others acting on its behalf and employers still enjoy the rights they enjoyed before the new Act; for example, the right to deal with the exclusive bargaining agent, or the right to insist on no work stoppages during the tenure of the collective agreement.

52. The similar statutory context leads the Board to conclude that a similar approach to dealing with interim relief is appropriate, one that finds substance from the rights contained in the Act, one of continuing development and refinement, and one which continues to recognize the extraordinary nature of interim relief, and the caution with which the Board must approach remedial relief in this area. The Board will remain cognizant of the potential for abuse, and remain aware that interim relief will often be a second-best alternative to a hearing on the merits. But where exercised with sensitivity, it is a power and approach that has served the community well, both union and employer.

53. For example, in *New Dominion Stores*, [1993] OLRB Rep. Aug. 783, the Board had to deal with competing claims by two trade unions with respect to bargaining rights in respect of over 200 different employers in the retail grocery industry. This dispute between the two unions arose in the context of a merger between two unions, which was contested by a rival union. The two resulting unions then engaged in a war of sorts as to who ought to have the bargaining rights with respect to a large number of stores across the province, involving a considerable number of employers.

54. It was apparent that some considerable time would pass before a decision could issue determining which union held bargaining rights for which employees. Throughout this time, neither the employers, the two unions, nor the employees at any of the stores could have reliably known which union was their bargaining agent. This would have effectively prevented all participants from dealing with each other in any meaningful fashion, and from exercising the rights that some or all of them might have enjoyed under the Act, because the scheme of the Act is premised on there being a single exclusive bargaining agent. The Board granted interim relief which preserved the status quo at the time; that is, particular employers were required to deal with whichever union they had been dealing with prior to the eruption of this dispute. The net effect was that rights and obligations under the Act continued until such time as the Board could deal with the application on the merits. While the interim orders made in that case issued under Bill 40, they provide an example of both the merit of the Board's approach and of orders that could, in our view, still appropriately be made.

Whether to grant Interim Relief here

55. Should the interim relief requested here be granted? We begin with the observation that, but for the consent of the parties, it is not apparent that this Board would have jurisdiction to deal with this type of application on the merits. As noted by the Crown, the question before the Board in the main application is whether the individuals in dispute are excluded from coverage by *CECBA*. The application does not raise the question of whether a particular person is a "employee" under the Act or not. Section 114(2) of the Act is said to give the Board jurisdiction, but it is limited to this latter question (with respect to the issues here).

56. At the same time, the Crown concedes that the Board can and should deal with this matter on the merits, and although it takes the contrary position with respect to the granting of interim relief, we recognize that with a little artful creativity, this matter could have come before us in a form that

would give us unquestionable jurisdiction. However, in the result, we need not base our decision in any respect on this point.

57. When we consider the merits of the parties' positions, it seems likely that some of the people or positions in dispute might well be excluded at the end of the day, as asserted by the Crown. Similarly, some will likely be found to not fall within the new *CECBA* exclusions. Any interim order might therefore deprive employees of significant statutory rights they enjoy. Employees covered by *CECBA* and the *Labour Relations Act, 1995* have the "right to strike", those excluded do not. Were we to grant the interim relief sought by OPSEU, and through an interim order direct that individuals claimed by the Crown to already be excluded by operation of law are not to be excluded pending a Board decision on the merits, the effect of our order would be to continue to place those employees in a position where the provisions of *CECBA* applied to them, and where they would be entitled to strike, and subject to the pressures and consequences of being in the bargaining unit. If they were ultimately excluded, our order would directly and irretrievably deny their statutory rights. The converse is also true. If through interim relief we exclude these employees (or more accurately, uphold their exclusion by operation of law), but they should properly never have been excluded, we would be depriving them of their right to vote, and if duly authorized, to strike. The harm that might result from any interim order is irreparable, and it is difficult to estimate whether the harm will be greater or less if interim relief is granted or not.

58. There were other examples of harm asserted by OPSEU, but such harm appears fully correctable once the result in the main application is known. The Crown undertook to fully compensate all employees found to be covered by *CECBA*, who had been improperly excluded, and to make full redress, so that those employees would be in the same position as if they had always been included. Any wage differentials, job postings or classification changes, and so on, can later be amended to fully reflect the eventual adjudicated result.

59. Of significance are the specific legislative provisions at issue. Under Bill 7, as of February 8, 1996, all persons falling within, for example, section 1.1(3)14 of *CECBA*, were deemed excluded. If we were to grant interim relief preventing the Crown from treating any of these individuals as excluded until such time as the application on the merits was heard, and any of them were subsequently determined to have properly been excluded (which, as noted, we consider not unlikely), through our interim power we would have effectively nullified the effect of section 67(2) of Bill 7.

60. Ultimately, there was one factor which we found compelling in deciding not to grant interim relief: OPSEU's stated inability to commence an adjudication on the merits for some considerable period. On January 11, 1996, OPSEU received a list of employees from the government of those employees that the government concluded ought to be excluded pursuant to the new amendments. This application was filed on January 25, 1996. At the hearing on the interim application, the Board indicated that it was prepared to deal with the merits through expedited scheduling, and it inquired of the parties when they might be able to proceed on the merits. Given the importance of the rights at issue, the imminence of any strike, and the problems with dealing with such disputes through interim relief, special resources devoted to adjudication on the merits made some sense.

61. The Crown indicated it could be prepared to proceed on the merits within two weeks. OPSEU indicated it could not begin to have the Board deal with the merits of the application for at least two months. While preparation for litigation would be extensive, given the number and variety of disputed positions, it still seemed to the Board that the time necessary should have been considerably less than two months. We concluded that OPSEU preferred to have the matter dealt with on an interim basis, rather than on the merits. OPSEU's unwillingness to have the matter heard on the merits in an expeditious fashion, without reasonable excuse, alone led the Board to conclude that no interim relief ought to be granted in the circumstances.

62. For all these reasons, the Board issued the decision that it did on February 5, 1996.

DECISION OF BOARD MEMBER R. W. PIRRIE; October 7, 1996

1. I concur with the decision not to grant the interim relief sought by OPSEU for the reasons set out in paragraphs 60 and 61 above.

2. That said, I must distance myself from the balance of the reasoning in this decision.

3. The effect of Bill 7 was to return the Province's labour relations legislation to what it had been prior to the NDP Government having enacted in Bill 40. It eliminated all of those provisions which the newly elected conservative government felt tilted the balance of power in favour of trade unions and away from employers. At the same time it attempted to empower employees in the process. There can be no question as to the government's intention with respect to interim orders. It was to limit, and indeed to curb the granting of interim orders by the Board.

4. At paragraph 26 above, the majority of the panel acknowledges that indeed section 98 of the *Labour Relations Act* does limit the Board to granting interim orders in procedural matters only. The majority, however, then goes on to find that through section 16.1 of the SPPA, the OLRB in fact retains its power to make interim orders which go beyond procedural matters.

5. My first difficulty is with the notion that the Board can use the SPPA, which in its entirety is given over to procedural matters, as an avenue to reclaim the jurisdiction to make non-procedural interim orders.

6. My second difficulty is that the majority at paragraph 50 above takes that jurisdiction by reference back to the *Labour Relations Act*, but in doing so totally ignores section 98 of that very Act, which speaks directly to its jurisdiction vis-a-vis interim orders.

7. It may be the case that in order to have certainty, the drafters of Bill 7 should have exempted section 98 of the *Labour Relations Act* from the SPPA. Indeed, in order to have absolute certainty, the drafters of the legislation should have removed section 16.1 from the SPPA entirely. That said, there is no doubt in my mind as to the legislation's intention regarding the scope of the Board's authority in granting interim orders, and I find this decision wrong in its reasoning and excessive in the extreme.

8. In conclusion I add the following comments by way of obiter. The majority of this panel, and more correctly in this instance the alternate chair of the Board, having made this precedent ruling that the Board has the jurisdiction to grant interim orders beyond mere procedural matters, goes on to discuss the approach the Board should use, vis-a-vis, section 16.1 of the SPPA. He reviews the approach the Board took under the Bill 40 interim order provision. I find it interesting that these comments lean heavily on what might be termed the more thoughtful rulings and reasoning about the use of interim orders during the Bill 40 period. That said, it is my view that no matter how well-intentioned some of the authors of the Board's Bill 40 jurisprudence may have been, the major thrust of that jurisprudence, and the process which accompanied it, was blatantly biased against the employers.

9. In my opinion, paragraph 52 above is almost a dream wish. The author starts by suggesting for the Board a similar approach to dealing with interim relief as was utilized under Bill 40. He uses terms such as the continued recognition of interim relief as an extraordinary measure, the need to remain cognizant of the potential for abuse, that interim relief will often be a second-best alternative to a merits hearing, that with the exercise of sensitivity, interim relief has the power to serve the community well, both union and employer.

10. I know both the current alternate chair and I were at the Board throughout the Bill 40 period. I can only say that my experience was that the interim relief provisions of the Act were never viewed by the majority of the Board, and more particularly, the overwhelming majority of the vice-chairs and the then chair, as anything but a very ordinary measure, that there was blatant abuse of the process which was never corrected, that interim relief was seldom denied in lieu of a merits hearing, and that sensitivity in granting interim relief was not a hallmark of the jurisprudence. I cannot recall many cases in my Bill 40 experience where the employer was well served by a Board's interim order. It is precisely for these reasons that the current government took the Board's interim order power away from it. Had the Board acted more judiciously in the exercise of its interim order authority, had the Board truly approached the authority as suggested in paragraph 52, it might well have retained its authority legitimately through the current *Labour Relations Act*.

11. I would have no reason to believe that the vice-chairs who were at the Board during the Bill 40 era, and who are still at the Board, will take any different approach to interim orders under the SPPA than was done under Bill 40.

12. Lastly, I note the majority at paragraph 47 does not deal with the reinstatement issue. If as the majority have decided, the Board derives its authority to grant interim orders beyond procedural matters from the SPPA, and so decides in the face of section 98(1) of the *Labour Relations Act*, it follows that that authority must extend to reinstatement. If the Board is going to ignore the legislative direction in section 98(1) it is going to ignore the direction in section 98(2).

0340-95-R; 0342-95-R; 2643-95-R; 2644-95-R; 2645-95-R; 2658-95-R; 2659-95-R; 2660-95-R; 2661-95-R; 2674-95-R; 2675-95-R; 2734-95-R; 2758-95-R; 2760-95-U; 2781-95-R; 2782-95-R; 2783-95-U; 2830-95-R; 2831-95-U; 2832-95-R; 2989-95-U; 3378-95-U; 3659-95-R; 4247-95-R; 1111-96-U Labourers' International Union of North America, Local 183, Applicant v. **Dominion Sheet Metal & Roofing Works**, Responding Party v. Canadian Union of Shinglers & Allied Workers, Intervenor #1 v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Intervenor #2; Labourers' International Union of North America, Local 183, Applicant v. Chislett Asphalt Roofing Corporation, Responding Party v. Canadian Union of Shinglers & Allied Workers, Intervenor #1 v. Toronto - Central Ontario Building and Construction Trades Council, Intervenor #2 v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Intervenor #3; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Jalex Roofing, Responding Party v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Trudel & Son Roofing Ltd., Responding Party v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Jackson Roofing, Responding Party v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Columbus Aluminum & Roofing Ltd., Responding Party v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers

Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Donia Roofing, Responding Party v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Chouinard Bros. Roofing, Responding Party v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Dell'Angelo Bros. Roofing, Responding Party v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Burnhamthorpe Roofing, Responding Party v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Maple Roofing, Responding Party v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America, Applicant v. Cumbrae Roofing Ltd., Responding Party v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America, Applicant v. Dominion Sheet Metal & Roofing Works, Responding Party v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Maple Roofing Ltd., Burnhamthorpe Roofing Co. Ltd., Trudel & Sons Roofing & Sheet Metal Ltd., Jalex Roofing Ltd., Columbus Aluminum & Roofing Ltd., Donia Aluminum & Roofing Ltd., Chouinard Bros. Roofing, Jackson Roofing Ltd., Dell'Angelo Bros. Roofing Limited, Responding Parties v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Labourers' International Union of North America, Local 183, Responding Party v. Labourers' International Union of North America, Intervenor #1, v. Dominion Sheet Metal and Roofing Works, Intervenor #2; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Labourers' International Union of North America, Local 183, Responding Party v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Labourers' International Union of North America, Local 183, Dominion Sheet Metal and Roofing Works, Chislett Asphalt Roofing Corporation, Responding Parties v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Labourers' International Union of North America, Responding Party; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Labourers' International Union of North America, Dominion Sheet Metal and Roofing Works, Chislett Asphalt Roofing Corporation, Responding Parties; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Labourers' International Union of North America, Responding Party v. Dominion Sheet Metal and Roofing Works, Intervenor; Labourers' International Union

of North America, Applicant v. Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Canadian Union of Shinglers and Allied Workers, Metropolitan Toronto Shinglers Association c.o.b. as Canadian Shinglers Association, Canadian Shinglers Association, Robert Shewell, Harold Biso, Steven Wolfreys, Responding Parties; Paul Reilly; Ron Goulet, Applicants v. Dominion Sheet Metal and Roofing Works and L.I.U.N.A. Local 183, Responding Parties v. Labourers' International Union of North America, Intervenor; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Chislett Asphalt Roofing Corporation, Responding Party v. Labourers' International Union of North America, Intervenor; Labourers' International Union of North America, Applicant v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Chouinard Bros. Roofing, Donia Aluminum & Roofing Ltd., Burnhamthorpe Roofing Co. Ltd., Jackson Roofing Ltd., Columbus Aluminum & Roofing Ltd., Trudel & Sons Roofing & Sheet Metal Ltd., Responding Parties; Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Labourers' International Union of North America, and Labourers' International Union of North America, Local 183, Responding Parties

Certification - Construction Industry - Evidence - Termination - Trade Union - Trade Union Status - Unfair Labour Practice - Board dismissing submission that decision in *Canadian Union of Shinglers & Allied Workers* case determinative of issue of employee status of crew leaders in residential roofing industry - *Res judicata* not applying to Board's finding regarding crew leaders in earlier case

BEFORE: *Lee Shouldice*, Vice-Chair.

APPEARANCES: *S.B.D. Wahl, J. Moszynski, Rick Weiss*, and *A. Ianuzzi* for the Labourers' International Union of North America and Labourers' International Union of North America, Local 183; *David McKee, Gerald Kinsella, Harold Biso, Stephen Wolfreys*, and *Robert Shewell* for Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America; *Mark Geiger* and *Mario Angeloni* for Residential Roofers Contractors' Association, on behalf of all contractors except Dominion Sheet Metal and Roofing Works and Chislett Asphalt Roofing Corporation; *C.E. Humphrey* (on May 17, 1996) and *Cheryl Edwards* (on July 16, 1996) on behalf of Dominion Sheet Metal and Roofing Works and Chislett Asphalt Roofing Corporation.

DECISION OF THE BOARD; September 3, 1996

I. Introduction

1. These proceedings consist of numerous applications for certification, applications for declarations terminating bargaining rights, and unfair labour practice applications which relate to new roofing work on low-rise homes in the residential sector of the construction industry. These proceedings came on for hearing on the merits on July 16, 1996, after a previous day of hearing on May 17, 1996 devoted to the resolution of various preliminary matters. Subsequent to the May 17, 1996 hearing date, a number of other hearing dates were adjourned while the parties attempted to resolve these proceedings without the need for an adjudicated decision. To date, those settlement efforts have been unsuccessful.

2. At the outset of the hearing on July 16, 1996, a small number of remaining preliminary matters were disposed of after hearing the submissions of counsel. After the lunch break, and prior to the commencement of the calling of evidence, counsel for the Labourers' International Union of North America and Labourers' International Union of North America, Local 183 (hereinafter referred to collectively as "the Labourers'") requested a ruling from the Board regarding the full effect on these proceedings of the decision of the Board in *Canadian Union of Shinglers & Allied Workers*, [1996] OLRB Rep. Mar./Apr. 215. After hearing brief submissions from counsel for the Labourers' and counsel for Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (hereinafter referred to as "the Carpenters"), it was agreed that the hearing would adjourn for the rest of the day, and reconvene on July 17, 1996, in order to hear more detailed submissions from counsel on the point. At the end of argument, counsel requested from the Board that a decision be issued prior to the next day of hearing so as to help guide the parties in the calling of evidence. This is that decision.

3. Prior to dealing in detail with the argument of counsel, I wish to address briefly the question of the participation of the responding party contractors in these proceedings.

II. Participation of the Responding Party Contractors in these Proceedings

4. At the initial day of hearing on May 17, 1996, and again on July 16, 1996, counsel for the Residential Roofers Contractors' Association (hereinafter "the R.R.C.A."), which appears on behalf of a number of the individual responding parties to these proceedings, and counsel for Dominion Sheet Metal & Roofing Works and Chislett Asphalt Roofing Corporation (hereinafter "Dominion" and "Chislett", respectively), indicated that their clients were not particularly interested in participating in what currently appears to be a long, drawn out legal dispute between the Carpenters and the Labourers', and therefore would not be attending at the hearing of these proceedings unless it was necessary to do so. As was determined in a previous decision of the Board dated April 16, 1996, the "broad unfair labour practice" allegations subsumed within the "voluntary recognition agreement" files and the unfair labour practice applications will proceed and be determined first, and for the most part those allegations do not implicate the responding parties named in the certification applications. The disinclination of the corporate responding parties to actively participate in those proceedings is not particularly surprising.

5. At the hearing on July 16, 1996, counsel for Dominion and Chislett advised the Board that her clients' determination to not attend the hearings on a regular basis during this phase of the proceedings had been made on the basis of "how the applications are framed, the particulars as filed, the requests for relief as framed", and on the assumption "that they are the final positions" of the trade unions. Counsel stated that she expected to be notified of any Board decisions, and that her clients would abide by any Board directions. Her clients also desired to participate in procedural matters, such as when other Board files will proceed after the completion of this phase of the proceedings.

6. However, counsel indicated that, should any of the parties desire to alter the particulars they rely upon, or the relief claimed, her clients expect the opportunity to participate on the issue of whether such an alteration of pleadings should be permitted. That is, if one of the other parties to the proceedings requests an amendment to its pleadings or desires to alter, amend, or augment the material facts it relies upon, Dominion or Chislett may well desire that counsel attend at the Board to argue the matter. This raises the question of the obligation, if any, on the Board to notify counsel or their clients who choose not to attend at Board proceedings of the current status of the pleadings or positions of the parties to one or more proceedings.

7. Without a doubt, all of the parties involved in these proceedings have been provided with notice of the hearing dates scheduled to hear the evidence and argument on all of the outstanding issues in these proceedings. In fact, more hearing dates have been set in these proceedings and notice of same is provided in paragraph 66 herein. If and when decisions of the Board such as this one are released,

the parties and their counsel can, of course, expect to receive a copy of same. The effect of receiving such a decision will be, at least to some extent, to notify the parties and their counsel as to the status of the proceedings, the matters decided, and the issues remaining to be litigated. I note here that in the decision of April 16, 1996, I determined that the order of the proceedings remaining to be litigated after this phase of the case would be determined prior to the commencement of the hearing of those proceedings. All counsel and their clients can expect to have the opportunity to make submissions on that issue if and when the time arises.

8. However, as I made clear to all in attendance on the morning of July 16, 1996, the Board will not be contacting either counsel for the R.R.C.A. or counsel for Dominion and Chislett during the course of these proceedings to advise of matters which arise for argument. The issues in a proceeding are typically framed by the pleadings and particulars filed with the Board by parties to the proceeding. In a perfect litigation world, the evidence adduced by the parties follows the material facts and/or particulars pleaded by the parties and a decision is rendered by the Board on the basis of the evidence heard, which evidence mirrors the pleadings and particulars previously filed.

9. We do not live in a perfect litigation world. Accordingly, during the course of a hearing a party may request leave of the Board to permit the amendment of its pleadings, or the filing of further particulars, so as to facilitate the calling of relevant evidence which had not earlier been known to the party. The Board, in accordance with its Rules of Procedure, has significant latitude to permit the amendment of pleadings, and will, in appropriate circumstances, exercise its discretion to permit the amendment of pleadings and/or the filing of further particulars. Such an amendment of pleadings or filing of further particulars may occur, in a complicated hearing such as this one, on numerous occasions.

10. As I noted at the hearing on July 16, 1996, it is not my intention nor is it my obligation in these proceedings to advise counsel for any of the responding parties who decides not to attend these hearings that one of the parties attending has requested leave of the Board to amend its pleadings or to file further particulars. Amendments requested of pleadings could be of any nature; they could be trivial or substantial; they could alter the potential relief claimed by the parties; they could affect the positions of the parties; and they could affect the responding parties directly or indirectly.

11. In these proceedings, should a request be made to amend one or more of the many pleadings, or to rely upon one or more particulars or facts not currently relied upon, I will hear argument from counsel in attendance as to whether leave to make the amendment or to permit reliance on the particulars ought to be granted in all of the circumstances. If an amendment to a pleading is granted, or one of the parties is granted leave to rely upon particulars not currently filed with the Board, then, depending on the nature of the amendment or the particulars, it may well be appropriate to direct the party amending its pleading or relying upon the particulars to advise all other parties to the proceeding of the amendment, and one or more of the responding parties may then decide to file an amended response, and attend to deal with the consequences of the amendment to pleadings or admission of further particulars previously granted. However, I reiterate that the Board does not intend to advise counsel each and every time the parties who do attend the hearing request an amendment to their pleadings, or desire to call evidence that does not perfectly reflect its pleadings or particulars currently filed. Those parties that don't attend the hearing take the risk that they may miss something important to their interests.

12. Here, counsel for the Labourers' indicated on the morning of July 17, 1996 that he had left a telephone message and/or voicemail message for both counsel for the R.R.C.A. and Dominion and Chislett respecting the events of the afternoon of July 16, 1996, and the intention to argue certain legal issues on July 17, 1996. No response to these messages had been received by counsel prior to the commencement of the hearing on July 17, 1996. It is perfectly acceptable for counsel attending at a

Board proceeding to contact absent counsel and advise of the status of the proceeding, if he or she so desires. However, on July 17, 1996, at 9:30 a.m., in the absence of counsel for the R.R.C.A. and Dominion and Chislett, the hearing nonetheless continued.

III. The Issue and the Dispute

13. The issue to be determined arises out of the bottom-line decision of Vice-Chair Surdykowski in *Canadian Union of Shinglers & Allied Workers* (Board File 0014-95-R, unreported, September 29, 1995), and the reasons for that decision dated April 30, 1996, reported at [1996] OLRB Rep. Mar./Apr. 215 (hereinafter collectively referred to as “the Surdykowski decision”). The question (though not the answer) can be quite simply stated: to what extent is the Surdykowski decision binding in these proceedings? Counsel for the Labourers’ argues that the Surdykowski decision determined, finally and authoritatively, an issue raised by the Carpenters in these proceedings - namely the “employee” status of crew leaders in the residential roofing industry. Counsel for the Carpenters disagrees with this interpretation of the Surdykowski decision. This question raises for determination the proper scope and application of the principle of *res judicata*.

IV. Legal Principles

14. There was very little dispute regarding the applicable legal principles, although counsel did not agree upon the application of those principles to the instant case. I set out, immediately below, the core principles of law applicable to the dispute between the parties.

15. In *Ellis-Don Limited*, [1992] OLRB Rep. Sept. 999, the Board described the doctrine of *res judicata* thusly:

11. *Res judicata* is a form of estoppel. Developed by the courts, the doctrine in its modern form is based on two broad principles of public policy:

- (a) that all litigation should have an end; and,
- (b) that no party should be forced to litigate the same matter more than once.

The doctrine of *res judicata* operates to preclude a party or its privies from re-litigating issues (other than through an appellate process) which have been resolved by a final judgement on the merits by a court or tribunal of competent jurisdiction. In effect, such a decision creates two forms of estoppel: cause of action estoppel and issue estoppel. The essence of such an estoppel, regardless of its form, is that a specific final determination by a court or tribunal of competent jurisdiction of a right, question or fact is conclusive evidence thereof in any subsequent proceeding between the same parties or their privies (or, if the judgement is *in rem*, in any subsequent proceeding) so long as the judgement stands, unless a party otherwise bound by such a previous determination can establish that there is a fact which, if proved, would entirely change the situation and could not, by the exercise of reasonable diligence, have been previously ascertained ...

16. As noted above, included within the doctrine of *res judicata* is the concept of issue estoppel. It is that concept which the Labourers’ asserts applies to the circumstances before the Board. The excerpt from *Ellis-Don Limited*, above, identifies the two broad principles of public policy that underlie the use of the doctrine. For the parties to any dispute, there is significant value attached to the finality of litigation between them. This is particularly true in labour relations matters, having regard to the continuing relationships between the parties to many proceedings before the Board. Furthermore, it is an established principle that the same party should not be forced to respond to the same claim in two (or more) proceedings. Both of these public policy concerns (reflecting a desire to avoid duplicative litigation, inconsistent results, and unnecessary expense (both that of the parties and that of the state)) have been identified as pertinent factors for consideration in previous Board decisions (see, for example, *Canadian General Electric Company Limited*, [1978] OLRB Rep. Apr. 384).

17. However, there are countervailing considerations which must be taken into account. After identifying the considerations which suggest a broader application of the doctrine to labour relations matters, the Board, in *Oakwood Park Lodge*, [1980] OLRB Rep. Oct. 1501, suggested other considerations which may well lead one to conclude that the doctrine has limited purpose before the Board:

... We do not think that 19th century cases concerning, in many instances, the resolution of property disputes or the devolution of estates, provide a very reliable source of the interpretation of *The Labour Relations Act*. Even the matrimonial cases do not provide an exact analogy; and it is interesting to note that the notion of an *in rem* determination has been described by the Supreme Court of Canada in *Sleeth v. Hurlbert* (1896), 25 S.C.R. 620 as “a harsh doctrine - a doctrine that can be used to the unjust destruction of individual rights and interests”. We were unable to find any case in which the Courts faced a situation identical to that now before us, but even if we had, it must be recognized that as a statutory tribunal with a mandate to administer a statute, monitor relations between employers and employees, and promote orderly collective bargaining, the Board might well have to approach the problem in a way that is different from that of the Courts ... The need for finality, the duplication of proceedings, and the possibility of inconsistent judgments were not considered overriding concerns in these cases. In our view, despite the undoubted utility of the doctrine from an administrative point of view, its complexity and the need to harmonize its principles with the purposes embodied in *The Labour Relations Act*, fully justify a cautious approach in its application. (at para 20)

18. As noted by the Board in both *Ellis-Don Limited*, above, and *Oakwood Park Lodge*, above, the Board is not compelled by law to apply the doctrine of *res judicata*. However, the Board has had many occasions to apply the principle, in order to ensure that the “two broad principles of public policy” identified above are not defeated. In *Arnold's Markets Limited*, (1962), 62 CLLC para 16,221, the Board stated, at page 992:

It seems obvious that as a general rule, once a fact or question has been put in issue and directly adjudicated upon in a proceeding before the Board, such adjudication should constitute a final determination of the matter between the same parties and conclusive evidence for or against them in any other proceeding before the Board which involves the same question or fact. It is our opinion that the Board ought, as a general rule, to apply a principle analogous to that of *res judicata* or estoppel with the result that it must accept an existing decision made by it on the merits as conclusive evidence for or against the parties or their privies in any subsequent proceeding brought before it by the same parties and involving the same questions or facts decided by it in the first decision.

19. The constituent elements encompassed by the principle of *res judicata* identified by the Board (see, for example, *Canadian General Electric Company Limited*, above, and *Construction Association of Thunder Bay Inc.*, [1987] OLRB Rep. July 976), courts of law (see, for example, *Re Bullen* (1971), 21 D.L.R. (3d) 628 (B.C.S.C.)), and in legal texts (see, for example, Sopinka, Lederman and Bryant, *The Law of Evidence in Canada* (Butterworths, Toronto, 1992), at pp. 990 and following) stem from the oft-quoted work of G. Spencer Bower and A. Turner, *The Doctrine of Res Judicata* (Butterworths, London, 1969), at paragraph 19. The principle of *res judicata* is said to apply when:

- (1) the alleged judicial decision was what in law is deemed such;
- (2) the particular decision relied upon was in fact pronounced, as alleged;
- (3) the judicial tribunal pronouncing the decision had competent jurisdiction;
- (4) the judicial decision was final;
- (5) the decision was, or involved, a determination of the same question as that sought to be contravened in the litigation in which the estoppel is raised; and
- (6) the parties to the judicial decision, or their privies, were the same persons as the parties

to the proceeding in which the estoppel is raised, or their privies, or that the decision was conclusive *in rem*.

20. In these proceedings, there was no dispute between the parties respecting the establishment of criteria (1) through (4) as they relate to the Surdykowski decision. The parties did join issue with respect to criteria (5) and (6). Accordingly, legal argument was directed to the establishment of the above two criteria in the circumstances of these proceedings.

21. When it is asserted that the principle of *res judicata* applies to the circumstances raised in a proceeding, the burden lies with that party raising the estoppel to establish all of the elements of *res judicata*. As noted above, one of the elements that must be established to found an issue estoppel is that the prior determination involved “the same question” as that sought to be raised in the instant litigation. It is sometimes difficult to identify the scope of “the question” or “questions” raised in prior litigation. As is noted by Spencer Bower and Turner in *The Doctrine of Res Judicata*, at pages 146-153, often judicial determinations may necessarily include, either expressly or implicitly, some lesser determinations of fact or law which are essential or fundamental to the main determination. These lesser determinations *may* give rise to an issue estoppel. Courts of law have struggled with the problem of identifying those “lesser determinations” which may found an issue estoppel.

22. Even if it is evident that a certain issue was determined in a previous proceeding, and that it is also raised in a current proceeding, an issue estoppel need not necessarily apply. It is now well-established in Canada that the principle of *res judicata* extends only to determinations which were fundamental to the earlier decision said to found the estoppel. The leading Canadian authority is *Angle v. Minister of National Revenue* (1974), 47 D.L.R. (3d) 544, a decision of the Supreme Court of Canada. In that case, the majority of the Court, speaking through Dickson J. (as he then was), adopted the description of the nature of the inquiry contained in Spencer Bower and Turner, *The Doctrine of Res Judicata*, at pages 181 and 182, which description is as follows:

In order to make this essential distinction one has always to inquire with unrelenting severity - is the determination upon which it is sought to found an estoppel so fundamental to the substantive decision that the latter *cannot stand* without the former. Nothing less than this will do.

It is pertinent to note that the Spencer Bower and Turner observed on the same pages that “other determinations, without which it would still be possible for the decision to stand, however definite be the language in which they are expressed, cannot support an issue estoppel...”. It is also noteworthy that the test adopted by Dickson J. in *Angle* was recently applied by the Ontario Court of Appeal in *Rasanen v. Rosemount Instruments Limited* (1994), 17 O.R. (3d) 267 (hereinafter referred to as “*Rasanen*”), at p. 278.

23. Also of some relevance is the following summary of the law extracted from *The Canadian Encyclopaedic Digest* (3d), Volume 10, at paragraphs 181 and 182 (footnotes omitted):

Estoppel by matter of record, or the principle of *res judicata*, applies to the particular issue that was determined by the earlier judgment, but not to collateral facts forming part of the evidence on which that issue was determined. The mere fact of evidence having been brought forward to substantiate or defeat one issue does not prevent a party from bringing forward the same evidence in a subsequent action between the same parties, either to maintain or defend other issues therein raised ...

The true test is identity of issue. The question then is whether the judgment is conclusive, not merely as to the point actually decided, but as to any matter which is necessary to decide, and which is actually decided as the basis of the decision itself, though not directly in issue.

24. With regard to the concept of “parties and their privies”, the leading Ontario decision is that of *Rasanen*. In that decision, the Court of Appeal upheld the determination of a trial judge in a wrongful dismissal action that the issue of whether “reasonable alternate work” had been offered to the employee plaintiff had previously been decided by a referee appointed under the *Employment Standards Act*, R.S.O. 1990, c. E. 14, and that the principle of issue estoppel made further inquiry regarding the same issue in the civil wrongful suit unnecessary.

25. The reasons of Abella J.A. deal extensively with the question of when one can be considered to be a party or a privy to previous litigation. Mr. Rasanen contended that the referee’s decision was not final and binding as against him because he was not a party to the statutory process contained in the *Employment Standards Act*. Abella J.A. disagreed. At p. 282, she made the following comments:

In my view ... the appellant was, if not a party to the earlier proceeding, certainly a privy. It was a hearing resulting from a claim he initiated. He participated in the two stages which preceded a referee hearing under the *Employment Standards Act* - the initial investigation and the officer’s review of the investigation. The Ministry of Labour, through counsel, appeared on the appellant’s behalf for the purpose of promoting his claim and defending the officer’s decision in his favour. He not only had notice of every step of the process and hearing, he was present at the hearing, gave evidence, heard the argument of all parties, and submitted or reviewed the relevant documentation filed.

At page 283 of the decision, Abella J.A. continued:

There was a clear community of interest between Rasanen, the employee whose claim was the subject of the proceedings culminating in the referee hearing, and the Ministry of Labour: both were seeking to uphold the prior determination made by an employment standards officer in those proceedings.

Abella J.A. went on to observe that Mr. Rasanen had called the witnesses he desired, introduced the relevant evidence needed, and had an opportunity to respond to the evidence and arguments against him. In her view, Mr. Rasanen, “enjoyed, in short, the full benefits that an official “party” designation would have provided”, and had had “a meaningful voice”. She concluded that Mr. Rasanen was a party or a privy to the prior proceeding.

26. The other two judgments in *Rasanen* also address the requirement that the principle of issue estoppel apply only to parties or their privies. Morden, A.C.J.O., who concurs with the application of issue estoppel in the circumstances, briefly notes his view that Mr. Rasanen was not a party to the proceeding before the referee, but that “the interests of the employment standards officer and the employee were the same and, for all practical purposes, counsel for the employment standards officer represented the employment standards officer and the appellant”. Accordingly, Morden, A.C.J.O. concludes that “the appellant was, at the least, a privy”.

27. Mr. Justice Carthy concurred in the result but disagreed with Abella J.A.’s view as to the application of issue estoppel. With regard to the element of “parties and privies”, Carthy J.A. notes that Mr. Rasanen was not a party to the employment standards proceeding. He saw the application of the principle of issue estoppel to Mr. Rasanen as one of policy, and described the issue before the Court as being whether issue estoppel should apply against Mr. Rasanen notwithstanding his non-party status before the referee. Focusing upon the “quick and efficient” nature of the relief under the *Employment Standards Act*, Mr. Justice Carthy observes that that legislation does not contemplate “a wide-open and time-consuming confrontation between the contestants”. He concludes that it would be unfair to Mr. Rasanen to consider him so closely associated with the proceeding under the legislation as to invoke issue estoppel against his common law claim for damages.

28. The *Rasanen* decision has been applied by the Board and by courts of law in numerous Canadian jurisdictions. Counsel brought the following decisions to my attention, each of which I have carefully reviewed: *Dableh v. Ontario Hydro et al* [1994] O.J. No. 2771; *Deagle v. Shean Co-Operative Limited*, [1995] N.S.J. No. 332; *Machado v. Pratt & Whitney Canada Inc.* (1995), 12 C.C.E.L. (2d) 127; *Nigro v. Agnew-Surpass Shoe Stores Ltd.* (1977), 18 O.R. (2d) 215; *Hamelin v. Davis* [1996] B.C.J. No. 109; and *McIntosh Limousine Service Ltd.* [1994] O.L.R.D. No. 2878.

29. Counsel also addressed during argument whether certain determinations made in the Surdykowski decision were determinations *in rem* and therefore not subject to the requirement that there be an identity of parties or their privies in the litigation. Counsel for the Labourers' relied upon the analyses of the Board found in *Canadian General Electric Company Limited* and *Construction Association of Thunder Bay Inc.*, above.

30. There are two different types of judicial decisions. Some decisions determine the rights and obligations as between only the litigants to the proceeding. Other decisions, though affecting the interests of the litigants, also determine or declare the status of the parties in regards to the world at large. The former decisions are referred to as decisions *in personam*, and the latter decisions are termed decisions *in rem*.

31. In both of the Board decisions referred to above in paragraph 29, the Board adopted as an accurate description of an *in rem* decision the following excerpt from *The Canadian Encyclopaedic Digest* (3d) Volume 10, at what is now paragraph 227:

A judgment *in rem* is universally binding. It is an adjudication pronounced upon the status of some particular subject matter by a tribunal having competent authority for that purpose. Such an adjudication, being a solemn declaration from the proper and accredited quarter that the status of the thing adjudicated upon is as declared, concludes all persons from stating that the status of the thing adjudicated upon was not that declared by the adjudication. Judgments *in rem* are conclusive against all the world, not only as the *res* itself, but also as to the grounds upon which the tribunal professed to decide or may be presumed to have decided.

32. It is the application of the above principles, therefore, that will determine the issue raised herein.

V. The Decision

33. I am of the view that the Labourers' have not established the elements of the test described above in paragraph 19 with regard to those matters which it alleges were established by the Surdykowski decision. My reasons for reaching this decision are set out below.

VI. Reasons for Decision

(a) What was Determined by the Surdykowski Decision

34. At the core of the current dispute between the parties is a differing opinion of whether the Surdykowski decision was, or involved, a determination of the "same question" as is raised in these proceedings, and also whether the questions or issues decided were fundamental to the decision rendered. Accordingly, it is critical to consider first just what question or questions was or were determined by the Surdykowski decision.

35. The natural starting point for determining what question or questions was or were determined by the Surdykowski decision is the decision of September 29, 1995. That Board proceeding involved an application to terminate bargaining rights brought under what was, at the time, section 61 of the *Labour Relations Act*. The applicants White, Brouwers and Cyr had applied to the Board for a

declaration that the Canadian Union of Shinglers & Allied Workers (hereinafter "CUSAW") no longer represented employees in certain bargaining units. The bargaining units were created as a result of certain voluntary recognition agreements which had been signed by the CUSAW and various roofing contractors. Section 61(3) of the Act put the onus of establishing that the trade union was entitled to represent the employees "on the parties to the agreement". In fact, the "employers" which were bound to what the CUSAW asserted were "collective agreements" took the view that the CUSAW was not a "trade union" for the purposes of the Act and as there had never been a previous Board finding that the CUSAW was a "trade union", the CUSAW proceeded first to call evidence to establish that it was.

36. At the end of the CUSAW's evidence, a non-suit motion was brought by counsel for the applicants. As described in the decision of Mr. Surdykowski dated September 29, 1995, the motion was entertained without putting any of the applicants or the intervenors to its election to call evidence on the basis that the motion was framed to focus on what Mr. Surdykowski styled "the fundamental issue in [the] application; that is, the issue of whether the CUSAW is a "trade union" within the meaning of the *Labour Relations Act*."

37. Mr. Surdykowski's conclusions are set out at paragraphs 7, 8 and 9 of the decision of September 29, 1995:

7. Having considered the evidence of the CUSAW and the representations of the parties with respect to the applicants' motion, I am satisfied that the CUSAW is not a trade union within the meaning of the *Labour Relations Act*.
8. Having concluded that the CUSAW is not a trade union within the meaning and for purposes of the *Labour Relations Act*, it follows that any agreement the CUSAW has with anyone cannot be a "collective agreement" within the meaning of the Act either. Therefore, the CUSAW holds no bargaining rights under the Act and is not entitled to represent employees for collective bargaining purposes under the Act.
9. In the result, the applicants' motion is allowed. This application is also therefore allowed.

The Board proceeded to declare that the CUSAW was not entitled to act as a bargaining agent for or to otherwise represent the employees of Dominion or Chislett (the two affected roofing contractors).

38. On April 30, 1996, Mr. Surdykowski released his reasons for reaching the above-noted decision. The Vice-Chair describes, in detail, how the hearing proceeded and how the non-suit motions arose. He describes, further, the issue of "trade union" status, and again notes that it is "fundamental" to the application before him.

39. With respect to the issue of whether the CUSAW was an "organization of employees formed for purposes that include the regulation of relations between employees and employers", Mr. Surdykowski described the evidence of the CUSAW in paragraphs 43 to 64, inclusive, of his reasons for decision. This evidence was given by Mr. Harold Biso, who is described as a co-founder and principal of the CUSAW, and Ms. Susan Bird, a Vice-President and Senior Consultant Administrator with J.J. McAteer & Associates Incorporated, which provides consulting and administration services for multi-employer health, welfare, and pension plans, and which was involved with the CUSAW in that regard.

40. Mr. Surdykowski notes that he was obliged to accept the evidence of Mr. Biso "as representative of how the industry operates". He states that "it was clear on the evidence before [him]" that crew leaders are employers and not employees, and that the CUSAW was created and operated by and primarily for the benefit of crew leaders. Mr. Surdykowski proceeds to describe the low-rise, residential roofing industry in some detail, based upon the testimony of Mr. Biso. He notes, for example, at paragraph 58, that "it appeared on the evidence before the Board" that the vast majority of crew leaders

have two or more crew members, and he sets out the number of crew members on the crews of Messrs. Cowie, Shewell, Wolfreys, Rogers and Biso, the founders of the CUSAW.

41. Mr. Surdykowski proceeds to describe, based on the evidence before him, how crew leaders obtain work for their crews, and how crew members are supervised by crew leaders. The crew leaders' control over "employment concerns" is noted, as is the method of compensation of both crew leaders and crew members. It is observed that Messrs. Cowie, Shewell, Wolfreys, Rogers and Biso continue to profit or lose from the work performed by their respective crews while attending to the affairs of the CUSAW.

42. The critical paragraphs for the purposes of the issues before me are paragraphs 65 through 67 of the April 30, 1996 reasons for decision. They read as follows:

65. I was satisfied that crew leaders effectively hire, assign work to, supervise, discipline, and fire crew members. Crew leaders obtain work and establish the rates of pay for their crew members on an individual basis, earn income from the labour of crew members, and from the control they exercise over their crew members they obtain the chance to make a profit but also run the risk of incurring a loss. They also consider and treat themselves as employers for income tax purposes. In the result, I was satisfied that crew leaders are employers for purposes of the *Labour Relations Act*.

66. I note that my conclusion in that respect did not depend in any way on the number of crew members engaged by the crew leaders. I was satisfied on the evidence before the Board that all crew leaders are employers, whether they have any crew members or not. ...

67. I was confirmed in my conclusion in this case by the relationship between crew leaders and roofing contractors. The relationship is one of contractor and subcontractor, both in Mr. Biso's evidence and on the agreement the CUSAW has managed to persuade a number of the roofing contractors to sign. Like the August 24, 1988 agreement before it, the current agreement is clearly intended to govern relations between crew leaders and the roofing contractors, and is not for the benefit of crew members, notwithstanding the use of terms commonly found in collective agreements.

43. Mr. Surdykowski summarizes the nature of his ruling at paragraph 70 of his reasons for decision dated April 30, 1996:

70. But the issue in this case was not whether some members of the CUSAW are not "employees", and what effect that might have. The issue was whether it is an organization of employees. It clearly is not. The five individuals who formed the CUSAW, who are its officers, and who dominate the organization in every way, are employers. Although it may have accepted "employees" as members, it, like the CSA Inc. and the MTSA before it, is clearly an organization which has been formed by and is operated for the benefit of employers; that is, the crew leaders. It is not an "organization of employees". Accordingly, it cannot be a trade union. Since only a trade union can obtain bargaining rights or enter into collective agreements under the *Labour Relations Act*, the CUSAW holds no bargaining rights and has no collective agreements. Accordingly, the declarations made as aforesaid were appropriate.

44. What, then, was determined by Mr. Surdykowski in the previous proceeding? In my view, the following questions and issues were at the core of Mr. Surdykowski's decision:

- (a) Was the CUSAW entitled to represent the employees in the bargaining units on the date on which the roofing contractors voluntarily recognized the CUSAW as bargaining agent?
- (b) Was the CUSAW a "trade union" within the meaning of the *Labour Relations Act*?
- (c) Were the agreements that the CUSAW had with the roofing contractors "collective agreements" within the meaning of the Act?

Mr. Surdykowski answered each of these questions in the negative. In order to reach these answers, it was necessary for Mr. Surdykowski to consider the creation of the CUSAW, and the “employer status” of its creators - namely Messrs. Biso, Wolfreys, Shewell, Cowie and Rogers. In that regard, Mr. Surdykowski found, on the basis of evidence adduced largely from Mr. Biso, that these five crew leaders, the catalysts behind the CUSAW and its predecessors, were employers for the purposes of the Act. There can be no doubt that this finding - that Messrs. Biso, Wolfreys, Shewell, Cowie and Rogers are employers for the purposes of the Act - was one which was so fundamental to the substantive issues decided by him that the latter could not stand without it.

45. Counsel for the Labourers’, though, argues that the Surdykowski decision ought to be read more broadly, and that his conclusions that crew leaders in general are employers ought to preclude evidence from being called in this proceeding which is intended to establish the contrary. I disagree. First, it is clear from the Surdykowski decision that Mr. Surdykowski had before him the evidence of Mr. Biso, and that his findings of fact were based primarily on that evidence. Mr. Biso, given his apparent prominence in the residential shingling industry, could clearly testify as to many aspects of the industry. But he could hardly have been speaking for every crew leader in the industry, and Mr. Surdykowski certainly does not suggest that Mr. Biso asserted to do so. Counsel for the Carpenters, in essence, states that certain cases are different, and that these applications are amongst those cases. Whether that is, in fact, so remains to be seen. But Mr. Biso’s evidence before Mr. Surdykowski could hardly have been exhaustive of the entire industry. Mr. Surdykowski’s assessment that crew leaders, generally, are “employers” was based on the evidence he had before him, which he acknowledged he was bound to accept “as representative of how the industry operates”.

46. Just as importantly, however, it is clear from the Surdykowski decision that the findings by Mr. Surdykowski relating to the nature of crew leaders generally was not in any way “so fundamental to the substantive decision” that his decision could not stand without it. Mr. Surdykowski’s determination that the CUSAW was not an “organization of employees” was based most critically upon his analysis of the status of the five individuals who formed the CUSAW, “who are its officers, and who dominate the organization in every way...”. Mr. Surdykowski found that these individuals are employers. To that extent, there is no dispute that that issue was determined by Mr. Surdykowski - and counsel for the Carpenters does not suggest otherwise.

47. In my view, the above-noted “questions” or “issues” were the core of the Surdykowski decision, and the determination that Messrs. Biso, Wolfreys, Shewell, Cowie and Rogers, as “crew leaders”, are employers for the purposes of the Act was fundamental to the questions and issues before Mr. Surdykowski. However, the assessment by Mr. Surdykowski that crew leaders, generally, were “employers” for the purposes of the Act, however definite that assessment is expressed, was *not* critical to the issues before him, and therefore the principle of *res judicata* cannot as a matter of law apply to that finding.

48. Although it is not necessary to comment on the further element of *res judicata* in light of my decision above, I think it is appropriate, nonetheless, to discuss my assessment of the sixth element directly below.

(b) Identity of Parties/In Rem Decision

49. There can be no doubt that there is not, in these proceedings, an identity of parties. The Surdykowski decision involved five separate parties: Joe White, Hank Brouwers, Paul Cyr, the CUSAW, and the R.R.C.A.. The entity against which the estoppel is raised - the Carpenters - was not a party to the prior Board proceeding. This much is self-evident.

50. Counsel for the Labourers' submitted that, at the very least, the appearance of Messrs. Biso, Shewell and Wolfreys on behalf of the Carpenters in these proceedings ought to permit for the conclusion that they were privies to the CUSAW, a party to the previous litigation, and that they are also privies to this litigation. As the issue estoppel which is being asserted in these proceedings is being asserted against the Carpenters, it was submitted that there was no good reason to preclude the application of the principle in these proceedings.

51. There can be no doubt that the Ontario Court of Appeal decision in *Rasanen* was a catalyst to a broader interpretation by the Courts of the concept of "privity" status. For example, in *Machado v. Pratt & Whitney Canada Inc.*, *supra*, the plaintiff sued the corporate defendant for damages for wrongful dismissal, and also sued a number of individuals for damages in tort, claiming that they intentionally or negligently induced a breach of contract, and for injurious falsehood, defamation, conspiracy to injure and conspiracy to perform an unlawful act. The plaintiff had also brought an employment standards claim for termination and severance pay. A referee appointed under that legislation concluded that the plaintiff had committed "wilful misconduct" and therefore was disentitled to termination and severance pay. The individual defendants in the civil action were witnesses before the referee in the employment standards proceeding, and had testified as to the conduct of Mr. Machado.

52. In the civil action, the defendants brought a motion before the Court to dismiss the action, on the basis of the principles contained in the *Rasanen* decision. Madam Justice E. MacDonald of the Ontario Court (General Division) applied the decision of the Court of Appeal and dismissed the claims as against the various defendants. In doing so, she addressed the issue of whether the individual defendants to the civil action had been "privity" to the prior employment standards litigation. She concluded that they had been, in fact, privy to the statutory claim, on the basis that the allegations made by the three individual defendants "could be described as Pratt & Whitney's case" before the adjudicator.

53. Applying a similar analysis to the facts before the Board, it could be suggested that Messrs. Wolfreys, Shewell, and Biso (all of which appeared on behalf of the CUSAW in the previous Board litigation), as they appear here before the Board in these proceedings on behalf of the Carpenters, ought to bind the Carpenters to all of the critical findings and determinations made in the Surdykowski decision. I am, however, satisfied that it would not be appropriate, in the circumstances, to apply such an analysis.

54. In *Oakwood Park Lodge*, above, the Board observed that there were some good reasons for the limitations placed by the Courts on the application of the doctrine of *res judicata*. At paragraph 13, the Board noted as follows:

It is clear from the two *Radio Shack* decisions that the Court has sanctioned the use of a doctrine analogous to *res judicata* - at least as between the same parties. It is also evident that in approving that use, the Court sought to accommodate both the rights of a party to a fair hearing, and the practical or administrative problems which might arise if issues previously resolved between the parties had to be relitigated. The Court was careful to point out however, that the requirements of natural justice had been satisfied because the findings subsequently relied on by the Board had been established in an earlier proceeding between the same parties in which both had had a full opportunity to present their evidence and make their submissions.

See also *Valentine Enterprises Contracting Limited*, [1981] OLRB Rep. June 807, which quotes the above extract from *Oakwood Park Lodge* with approval.

55. Quite simply, I do not believe that there is a sufficient degree of interest between the five individuals who created the CUSAW, on the one hand, and the Carpenters, on the other, to permit for the conclusion that the Carpenters ought to be considered to have been a "privity" to the prior litigation.

If anything, the interests of the Carpenters in the previous litigation would have been aligned with those of White, Brouwers, and Cyr, the applicants, as the Carpenters' long-run goal of representing employees in the residential roofing industry could best be achieved by a Board declaration that the CUSAW was not a trade union for the purposes of the Act. To conclude that the Carpenters were a "privy" to the former litigation, because Messrs. Shewell, Biso and Wolfreys have now associated with the Carpenters, would, in my view, unfairly deny to the Carpenters the right to be heard on the issue of the "employee" status of the crew leaders, which issue is raised squarely for determination in these proceedings.

56. I am also of the view that, whether or not the finding in the Surdykowski decision that crew leaders are not "employees" for the purpose of the Act is an *in rem* decision, I ought not to strictly apply that aspect of the doctrine of *res judicata* to the circumstances of these proceedings.

57. There are two Board decisions which touch on this issue. The first, *Canadian General Electric Company Limited*, above, involved an application for certification relating to cost estimators and cost analysts. The employer, relying upon a decision of 24 years vintage which involved another trade union, and which concluded that individuals in these positions ought to be precluded from collective bargaining because of their managerial status, asserted that the principle of *res judicata* applied to preclude the applicant from denying the managerial status of the cost estimators and cost analysts in the Board proceeding.

58. One of the issues dealt with by the Board was that of the identity of parties and whether the prior decision was of an *in rem* nature. The Board determined that the earlier decision "dealt with the status of the persons in question as employees under the Act. It was, therefore, a decision of general application or analogous to an *in rem* decision." Accordingly, the Board concluded that the applicant in the then-current proceeding need not establish an identity of parties. It should be highlighted, though, that the Board did note, at paragraph 26 of the decision, that it had the discretion to decline to apply the doctrine of *res judicata*, and that there may be situations where a strict application of the doctrine might be best tempered by "industrial relations realities".

59. In *Oakwood Park Lodge*, above, a similar issue arose. In that case, the Ontario Nurses Association ("ONA") applied to represent 11 registered nurses employed by Oakwood Park Lodge. The employer submitted that none of the nurses were "employees", on the basis of a prior decision of the Board involving another trade union, the Service Employees International Union. In the latter decision, the Board concluded that registered nurses exercised managerial functions and were not "employees" for the purposes of the Act.

60. As a result of the difference in parties to the proceedings, the Board addressed the issue of whether the prior Board decision was an *in rem* decision, which bound ONA for the purposes of the proceeding before it. The Board noted the prior decision in *Canadian General Electric Company Limited*, above, reproduced the critical passage excerpted above in paragraph 58, and observed as follows, at paragraph 18:

No previous judicial or Board authority was cited in support of this conclusion; moreover, since the Board subsequently found that there had been change in the statute, and therefore "the law" since the 1954 decision, its observations were *obiter* and not strictly necessary to its final decision.

The Board made reference to the caveat contained in the *Canadian General Electric Company Limited* decision, also noted above in paragraph 58.

61. Ultimately, the Board did not preclude ONA from asserting the "employee" status of the registered nurses in question. After noting that the doctrine of *res judicata* ought to be applied in a "cautious" manner, the Board noted at paragraph 21 that:

We do not think that we are compelled as a matter of law to bar the applicant from relitigating the status of the respondent's employees; nor having considered the decided cases and the countervailing considerations do we think that as a matter of policy, the applicant should be prevented from leading its evidence and making its submissions. We accept [ONA's] contention that important statutory rights are involved and that the Board should not lightly deny its right to a hearing on the merits - especially where, as here, it was not a party to the earlier proceeding and (unlike the employer in *Radio Shack*) it has never had the opportunity to put forward its position.

62. I agree with these observations. Whether the "employee" status of crew leaders as determined by the Surdykowski decision is or is not an *in rem* decision, I would not strictly apply the doctrine of *res judicata* to the circumstances of these proceedings. As noted above, the assessment made by Mr. Surdykowski was made on the basis of the evidence of one individual involved in the industry - Mr. Bisio. And although the conclusion reached by Mr. Surdykowski was very likely supportable on the basis of that evidence, the evidence of Mr. Bisio could hardly be considered to be exhaustive of the industry. Important statutory rights of representation are at issue in these proceedings, and in light of that I am loathe to preclude the Carpenters from asserting that crew leaders in certain circumstances are "employees".

63. For all of these reasons, I dismiss the Labourers' motion. The hearing in these matters will proceed on the merits in accordance with the terms of this decision and the decision of April 16, 1996.

VI. Prima Facie Case Motion - Board File 1111-96-U

64. I have carefully reviewed all of the submissions filed by counsel regarding this proceeding. For reasons to follow at a later date, I am of the view that the application in Board file 1111-96-U does not disclose on its face a case for the orders and remedies requested, and I therefore dismiss the application. I note for the benefit of counsel, particularly counsel for the Carpenters, that my decision does not turn upon whether or not the proposed "amendments" to the application would be permitted.

VII. Miscellaneous Matters

65. Board Files 2760-95-R and 3378-95-U ought to be heard in connection with these global proceedings. Accordingly, I have seized myself of those matters and they have been added to the other proceedings previously before me. The name of one of the applicants in board File 3378-95-U is amended to read "Ron Goulet".

66. These proceedings are currently scheduled to reconvene on September 6, 1996, and on the following days, at "the Boardroom", 400 University Avenue, Toronto, Ontario, 6th Floor, at 9:30 a.m.:

September, 1996: 10, 11, 12, 17, 18, 19, 24, 25, 26.
October, 1996: 16, 17, 18, 22, 23, 24, 29, 30, 31.
February, 1997: 12, 13, 14, 19, 20, 21.
March, 1997: 5, 6, 7, 12, 13, 14, 26, 27, 28.

1994-96-R Lynda Ann Falvo, Applicant v. United Food & Commercial Workers International Union, Local 175/633, Responding Party v. Birssa Holdings Inc. c.o.b. as East Side Mario's, Intervenor

First Contract Arbitration - Practice and Procedure - Termination - Union's first contract application pending before Board - Employees subsequently filing termination application - Union's response to termination application including allegations of employer initiation or

interference in connection with application - Union seeking dismissal of application under section 63(16) of the Act - Board determining that representation vote ought not to be held at this stage and that first contract application and termination application be listed together for hearing

BEFORE: *Christopher Albertyn*, Vice-Chair, and Board Members *S. C. Laing* and *R. R. Montague*.

DECISION OF THE BOARD; October 16, 1996

1. This is an application for termination of the union's bargaining rights.
 2. The union responds by making serious allegations under section 63(16) of the *Labour Relations Act, 1995* of employer initiation of the termination application.
 3. There is pending before the Board, due for hearing on October 21, 1996, an application by the union for first contract arbitration under section 43 of *the Act* in Board file No. 1910-96-FC.
 4. The Board has resolved that a representation vote in respect of the termination application will not be held at this stage, given the matters referred to in paragraphs 2 and 3 above. This application will be listed for hearing on October 21, 1996, with Board file No. 1910-96-FC. The panel hearing the applications may determine the matters referred in subsection 43(23) of *the Act* and whether and when, or not, to order the representation vote sought by the applicant.
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0104-96-G Bricklayers' & Masons' Union No. 1, Ontario of the International Union of Bricklayers & Allied Craftsmen, Applicant v. **G.S. Wark Limited**, Responding Party v. Construction Workers Local 6, affiliated with the Christian Labour Association of Canada, Intervenor

Abandonment - Bargaining Rights - Construction Industry Grievance - Board reviewing its approach where abandonment of bargaining rights alleged, including onus of proof and circumstances requiring that onus shift, standard of proof necessary to establish abandonment, and significance of union's "intent" - Parties agreeing that union never intended to abandon ICI bargaining rights - In this case, Board not satisfied that Bricklayers' union abandoned its bargaining rights with respondent general contractor

BEFORE: *G. T. Surdykowski*, Vice-Chair, and Board Members *F. B. Reaume* and *J. Redshaw*.

APPEARANCES: *J. David Watson* and *Kerry Wilson* for the applicant; *Stephen McArthur*, *Wendy C. Hyman* and *George Wark* for the responding party; no one appearing for the intervenor.

DECISION OF G. T. SURDYKOWSKI, VICE-CHAIR, AND BOARD MEMBER J. REDSHAW;
October 18, 1996

1. This is a referral to the Board of a grievance in the construction industry, under section 133 of the *Labour Relations Act, 1995*.
2. The applicant trade union ("Local 1") grieves that the responding employer ("Wark") has violated the provincial collective agreement between the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen, and the Masonry Employers Council of

Ontario, effective from July 28, 1995 to April 30, 1998 (the "Bricklayers Provincial Agreement"), and seeks certain declarations and orders with respect thereto.

3. Wark denies that it is bound by the Bricklayers Provincial Agreement and submits that the grievance should therefore be dismissed. In that respect, Wark concedes that it voluntarily recognized and entered into a collective agreement with Local 1 on February 19, 1963, but asserts that Local 1 has abandoned any bargaining rights it obtained through that agreement.

4. The parties agreed to proceed by dealing with the abandonment issue first, and also agreed that the Board should remain seized of the grievance if it concludes that Local 1 does hold the bargaining rights it asserts. In addition, the parties filed an Agreed Statement of Facts with respect to the abandonment issue as follows:

AGREED STATEMENT OF FACTS ON THE "ABANDONMENT" ISSUE

1. The respondent is a general contractor.
2. The respondent was awarded a general contract in 1963, and in order to complete the contract following the insolvency of the masonry subcontractor, signed an agreement with the applicant (Exhibit 1).
3. Since 1963, the respondent has always subcontracted its masonry work and has never employed any bricklayers directly.
4. In 1970 the union delivered a copy of Exhibit 1 to the respondent and the respondent acknowledged receipt of same (Exhibit 2).
5. In 1973, the applicant listed the respondent as a general contractor "under agreement to Local 1" in a letter to the O.P.C. (Exhibit 3). There is no evidence that this document was given to the respondent.
6. In 1979 the applicant referred some form of grievance against the respondent to the O.P.C. Due to a lack of documentation and failing memories, the only evidence concerning this grievance and its [disposition] are the two letters attached to the Reply (Exhibit 4 & 5). There were no further grievances or written correspondence between the applicant and the respondent until 1994. The 1994 [contact] was not a grievance, but a request by the applicant that the respondent pay the "holdback" directly to the bricklayers. This was done by a trust cheque issued to the applicant paid from the trust account of McArthur Vereschagin.
7. Between 1963 and 1977, it appears that the respondent subcontracted masonry work (within the geographic area of the applicant) to employers under agreement with the applicant. However, it is possible that some such work was subcontracted non-union.
8. CLAC does not have any masonry subcontractors under agreement in the Hamilton area. No subcontractor having an agreement with CLAC has ever performed masonry work for the respondent.
9. Exhibit 6 is a "partial" job list that [sic] from 1979 to 1995. The jobs highlighted in yellow were performed by masonry subcontractors under agreement with the applicant. To the best of the union's knowledge, the masonry subcontractor on the Men's Detoxification Centre was Bert Gorgi Masonry, which is bound to an agreement with the applicant. Originally, the masonry subcontractor at St. Raphael's Catholic School was also given to Bert Gorgi Masonry however, the subcontract was cancelled due to this company's insolvency. The respondent paid the applicant directly through its solicitors for wages owing to employees as a result of Bert Gorgi's insolvency.
10. The union's business manager, Dave Priestly was ill and unable to work through 1982

and 1983. During this period, Mr. Priestly's replacement was unfamiliar with the duties of [a] union representative.

11. In 1983, the respondent was the general contractor awarded a contract for the construction of Construction House in Hamilton. As a result of pressure by the applicant, the masonry subcontractor on this project, Comin Masonry, signed a collective agreement with the applicant. Thereafter, the project was completed by Comin Masonry pursuant to the terms of the Bricklayers Provincial Collective Agreement. At the time when the Construction House Project was awarded, Comin Masonry was non-union. The respondent has no direct knowledge of what lead [sic] Comin Brothers Masonry to sign a collective agreement with the applicant.
12. In February 1996, the union filed a grievance as a result of the respondent using a non-union subcontractor to perform masonry work at a commercial or industrial project on Rennie Street in Hamilton.
13. The applicant never intended to abandon its ICI bargaining rights with the respondent.
14. The responding party's evidence would be that since 1963 it awarded subcontractors on the basis of low bid, without regard to union affiliation.
15. On its larger projects the respondent would have carried on business openly, with job site signage and an equipment trailer marked "G.S. Wark".

[The Exhibits attached to the Agreed Statement of Facts are not reproduced herein.]

5. We note that the Construction Workers Local 6, affiliated with the Christian Labour Association of Canada (the "CLAC") filed an intervention asserting that it is the bargaining agent for the employees of Wark who are affected by this grievance. The CLAC attended at the Board on the first day scheduled for hearing on September 9, 1996, which the parties spent negotiating their Agreed Statement of Facts, but was not represented when the hearing actually began and the abandonment issue was argued on September 10, 1996.

6. In the absence of any other explanation or suggestion, the Board must look to the materials filed for an explanation for this. First, it is far from clear that the CLAC collective agreements to which Wark has been bound over the years cover bricklayers (or stonemasons, plasterers, their respective apprentices, improvers and working foremen), who are the employees which Local 1 asserts it represents. Second, on the agreed facts before the Board, the CLAC has no collective agreements with any masonry subcontractors in the Hamilton area where Wark is active, and no subcontractor bound to a collective agreement with the CLAC has ever performed any masonry work for Wark. The only reasonable inference from this, and from the CLAC's (and Wark's) failure to pursue the assertion that the CLAC holds bargaining rights which are relevant to the Board's considerations in this case, is that the CLAC does not hold any such rights.

7. Wark submits that the conduct of Local 1 in the some 33 years since the parties entered into a collective agreement in 1963 demonstrates that Local 1 has made no effort to enforce any collective bargaining rights or to maintain a collective bargaining relationship with the company. Indeed, says Wark, Local 1's conduct constitutes an acknowledgement that it has no bargaining rights with the company.

8. Local 1 submits that whether or not bargaining rights have been abandoned is a question of fact, that a prerequisite to such a finding of abandonment is a finding that the trade union concerned intended to give up its bargaining rights, and that there is a heavy onus on an employer to present clear and cogent evidence of abandonment in order to rebut the operative presumption in such cases; that is, that the trade union has not abandoned its bargaining rights.

9. The principle that a trade union can abandon bargaining rights is firmly established. It has been applied by the Board for some forty years, and the Board's jurisdiction to find that a trade union has abandoned bargaining rights has been confirmed by the courts (see, for example, *Re Hugh Murray (1974) Ltd. & John Entwistle Construction Limited* (1980) 33 O.R. (2d) 667, application for leave to appeal to the Court of Appeal dismissed February 2, 1981). Indeed, Local 1 did not suggest otherwise in this case.

10. A primary purpose of every Ontario *Labour Relations Act* has been, and continues to be under the current Act, to facilitate collective bargaining and promote the expeditious resolution of workplace disputes. This purpose cannot be realized if a trade union is not active in the exercise of its bargaining rights. In addition, where a union does not exercise its bargaining rights, unfairness or prejudice can result, either to the employees the union is supposed to be representing, or to the employer which concludes that it is free to act as though there is no union in place. Accordingly, a trade union which has obtained bargaining rights, whether through certification or voluntary recognition, is expected to actively exercise those rights. A trade union which fails to use bargaining rights may lose them.

11. Whether a trade union has abandoned bargaining rights is a question of fact which stands to be determined on the facts surrounding the issue in each particular case. Among the factors which the Board considers in determining an issue of abandonment are the length and degree of the trade union's inactivity, whether the trade union has attempted to negotiate or renew a collective agreement, whether terms and conditions of employment have been altered without the agreement or objection from the trade union, and the trade union's explanation for its conduct (or lack thereof). The quality of a trade union's representation will not, as such, be a relevant consideration, except to the extent that it may suggest abandonment. For example, complete inactivity and a refusal to respond to employee complaints indicates a poor quality of representation which may, in the context of the circumstances as a whole, and in the absence of a satisfactory explanation from the trade union, indicate abandonment.

12. It is true, as Local 1 asserts, that the onus is on the parties asserting abandonment to establish it, and that the presumption is that trade unions do not voluntarily abandon bargaining rights (*Ellis-Don Limited*, [1992] OLRB Rep. Feb. 147; application for judicial review dismissed [1995] OLRB Rep. Dec. 1506, Ontario Court of Justice (General Division), Divisional Court).

13. Notwithstanding the language used in some Board decisions, we respectfully suggest that it is inaccurate to say that "clear and cogent" evidence is required to establish abandonment, at least in the sense suggested by Local 1. First of all, the Board's factual determinations are always made on the balance of probabilities, while "clear and cogent", as argued by Local 1, suggests some higher test. Second, a common feature of abandonment cases is a less than satisfactory evidentiary foundation. It is not unusual, as in the case herein, for abandonment cases to deal with long periods of time for which there is little documentary evidence and where witnesses are either unavailable or have a very poor recollection of events. Many abandonment cases have to be determined on the basis of inferences drawn from bits of documentary or other evidence which is available. Accordingly, what constitutes evidence of abandonment, and what evidence is sufficient to rebut the presumption against abandonment, will depend on the circumstances. Further, since the operative presumption is clearly rebuttable, the onus can shift to the trade union to explain its conduct (as it does when it comes to a consideration of automatic collective agreement renewal clauses, for example - see below).

14. Similarly, although a trade union's "intent" with respect to bargaining rights is a factor which the Board will consider, this intent must be discerned from the objective facts, and the reasonable inferences which can be drawn from those facts. The weight which is given to a trade union's subjective *ex post facto* expression of intent at a hearing when abandonment is raised will depend on the

circumstances, but it will generally be given little weight unless there is something in the evidence before the Board which supports it, and it will not necessarily be determinative in any event.

15. Further, cases which involve the province-wide bargaining scheme in the ICI sector in the construction industry present particular difficulties. Many such cases, including this one, involve periods of time which both precede and follow the introduction of province-wide bargaining in 1978. At the very least, the Board will consider post-provincial bargaining conduct insofar as it may give an indication of whether the bargaining rights in issue were or were not abandoned prior to the introduction of provincial bargaining (*Marineland of Canada Inc.*, [1990] OLRB Rep. Dec. 1298). This does not mean that post-provincial bargaining conduct cannot be the basis for a finding of abandonment and it seems that a further clarification may be necessary in that respect.

16. It has been suggested that the Board's decisions in *Culliton Brothers Limited*, [1982] OLRB Rep. March 357 and *Lorne's Electric*, [1987] OLRB Rep. Nov. 1405 stand for the proposition that provincial bargaining rights in the ICI sector cannot be abandoned. We respectfully disagree. In neither of those decisions did the Board say that the principle of abandonment does not apply to the province-wide bargaining scheme and provincial collective agreements in the ICI sector of the construction industry. (Nor is it impossible for there to be abandonment of ICI bargaining rights. Consider the admittedly extreme example of an employee bargaining agency, having the actual authority to do so, writing to an employer expressly stating that it and all of its affiliated bargaining agents are abandoning their ICI bargaining rights with respect to that employer.) Those decisions do no more than suggest that it is more difficult to establish abandonment in such circumstances because of the way bargaining rights are distributed under the Act, and the way that provincial agreements operate in the ICI sector. Further, to the extent that either of these decisions, or others, suggest that the conduct of an employee bargaining agency or an affiliated bargaining agent cannot weigh against other affiliated bargaining agents (or the employee bargaining agency, which in any case is always also an affiliated bargaining agent) for the purpose of determining whether bargaining rights have been abandoned, we also respectfully disagree. It will not necessarily be the case that the conduct of one trade union entity will weigh against another related trade union entity in that respect, but it is not obvious why that could never be the case. Indeed, the conduct of other affiliated bargaining agents, or the employee bargaining agency, which have had an opportunity to exercise bargaining rights may be symptomatic of abandonment, or not, as the case may be.

17. In this case, we are concerned with the period February 19, 1963 when Wark and Local 1 entered into a collective agreement, to February 20, 1996, the date on the grievance letter herein. This is a 33-year period, of which 15 years were before and 18 years were after provincial bargaining came into effect.

18. The evidence is indeed sparse, but what the Board is left with is this:

1. Wark has always operated as a general contractor. It has not directly employed bricklayers, except on one occasion.
2. In early 1963, Wark decided to complete some masonry work which it had originally subcontracted, and for that purpose it entered into a collective agreement with Local 1, and (we infer) directly employed members of Local 1 to perform the work. Wark has never employed any bricklayers since.
3. The collective agreement which Wark and Local 1 entered into was effective from February 19, 1963 to May 1, 1964 and provided that it would continue in force "from year to year thereafter unless notice of

proposed change is given by either party within ninety days prior to [May 1, 1964], or within ninety days prior to such day and month in any succeeding year.”

4. No notice to bargain was ever subsequently given by either Wark or Local 1. Wark and Local 1 did not directly enter into any other collective agreement. Indeed, there was no written communication, either with respect to bargaining or the collective agreement until 1970 when Local 1 sent a copy of the 1963 agreement to Wark.
5. The 1963 collective agreement contains the following recognition and subcontracting clauses:
 - (4) The Employer recognizes the Union as the exclusive bargaining agent of all of the employees of the Employer within the jurisdiction (geographical) of the Union who do or perform any of the work as classified as work of members of the Union in Schedule “A” of this agreement, and who do or perform any of the work of laying, pouring, application and erection of all refractory materials, whether such materials are laid, trowelled, poured, blown or pounded and wherever installed.
 - (6) It is agreed that should the Employer sub-contract any of the work coming within the scope of this agreement, that such work will be let only to employers who have collective agreements with the Union.

It also contains the following provision:

- (8) It is further expressly agreed to between the Union and Employer that each will comply with and adhere to the terms and conditions of employment of the Agreement made between the Union and the recognized and/or established employer group representative of the trade or sections thereto; and to any and all changes or “new” agreements from time to time made; and without limiting the generality of the foregoing, the employer will adhere to and comply with the terms of such agreements with respect to wages and hours and days of work and any changes or “new” agreements from time to time made; the obligations and covenants herein (8) to take precedence and supersede the obligations and covenants expressed elsewhere in this agreement where the obligations of the employer is in conflict therewith; a copy of any and all agreements are attached hereto, and the employer will be notified of any changes or new agreements made.

In that latter respect, we note that the copy of the 1963 collective agreement filed with the Board by the parties consists of a single page. There is no “Schedule A” which is referred to in clause (4). Was there one? We don’t know. Nor were there any documents of the kind referred to in clause (8). Were there any? Again we cannot be certain, but since the parties agreed that there were no other materials or written communications exchanged between them other than the ones filed, and there is nothing in the agreed facts which suggests that Wark is a member of any employer organization with which Local 1 had dealings prior to provincial bargaining, we find it appropriate to infer that there were not.

6. In the absence of any evidence or even suggestion to the contrary, we infer that there was no other communication whatsoever between Wark and Local 1 until late 1978.

7. On October 31, 1978, Local 1 filed some sort of grievance. The particulars of this grievance have been lost and forgotten. All we know about it is that it was taken up by the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen which requested, by letter dated February 20, 1979, that Wark provided it with a copy of Wark's collective agreement with CLAC. We also have before us a copy of a letter from Wark dated March 22, 1979 in response of the Ontario Provincial Conference's request. There is nothing before the Board which indicates what happened with this grievance.
8. There is no suggestion that there were any other grievances (either before or after provincial bargaining) until the grievance before the Board in this case.
9. Wark has been continually and visibly actively involved in masonry work in the ICI sector within Local 1's territorial jurisdiction from 1963 to the present.
10. Prior to provincial bargaining, from 1963 to 1977, Wark subcontracted all or substantially all of its masonry work to employers with which Local 1 had a collective agreement. The fact that it is "possible" that some masonry work was subcontracted non-union, is not a basis upon which the Board can reasonably infer that that in fact happened, or even if it did, that any significant amount of work was subcontracted to non-union employers.
11. After the introduction of provincial bargaining, from 1979 to 1995, Wark did subcontract some of its work to non-union employers. It is difficult to discern how much of Wark's masonry work went non-union. The list of projects agreed to between the parties lists only the name of the project, the name of the masonry subcontractor, and the year. We know nothing about the size or duration of any of the projects, or of the nature of Wark's involvement with them. We are left with a list of 56 ICI projects, 36 (or 64%) of which were subcontracted to contractors which are bound to the Bricklayers Provincial Agreement, and 20 (or 36%) of which were subcontracted to non-union contractors, plus Local 1's agreement that throughout the entire period since 1963, Wark subcontracted masonry work without regard to union affiliation. However, upon closer inspection of this partial job list filed by the parties, we find that at least 7 of the 20 projects which were subcontracted non-union were performed outside of Local 1's geographic jurisdiction (i.e. the Parry Sound, Guelph, Oshawa and Napanee projects). These cannot be directly held against Local 1 and changes the picture considerably since the union and non-union subcontracted percentages have changed to 73% and 27% respectively. Although it is reasonable to infer from this that neither the employee bargaining agency nor any other affiliated bargaining agent has filed a grievance against Wark in that respect, there is nothing before the Board which suggests that any of these jobs did or ought to have come to their attention, or that they were grievable (i.e. that they did not fall within the exceptions in Article 1 of the Bricklayers Provincial Agreement) (see below).

12. It is reasonable to infer from the evidence that since 1964, when the initial agreement expired and was automatically renewed, Wark has conducted itself as though it has not been bound by any collective agreement with Local 1.
13. The only other document which makes reference to Wark is a "list of contractors under agreement to Local No. 1 Hamilton, Ontario" prepared by the union for its own purposes, in early 1973 it appears. Wark is listed as a contractor which "sublets all work". This document was not sent to Wark.
14. We note that the Bricklayers Provincial Agreement under which the grievance herein is filed was not filed with the Board until the Board asked for a copy at the hearing. This Provincial Agreement, between the employee and employer bargaining agencies as required by the Act, contains the following recognition and subcontracting provision:

ARTICLE 1

Recognition and Sub-Contracting

(a) The Employer recognizes the Union as the exclusive bargaining agent for Bricklayers, Stonemasons and Plasterers, their respective Apprentices, Improvers and Working foremen in his employ in the Province of Ontario, in areas described in Appendix "B" hereto.

(b) The Union recognizes the Employer as the exclusive bargaining agent for all members as outlined in Appendix "A" and any other Employers desirous of entering into a contractual agreement with the Union in the geographic areas as described in Appendix "B" hereto.

(c) Any Employer who is a party to this Agreement desirous of contracting or sub-contracting any work encompassing the skills of members of the Ontario Provincial Conference shall only contract or sub-contract same to a contractor or sub-contractor who is bound by the Provincial Agreement with the Ontario Provincial Conference.

(d) Without restricting in any way the application of the subcontracting provision contained in Article 1(c) of this Agreement, an Employer who undertakes a contract with an owner to provide construction management services shall be subject to Article 1(c) unless:

- i) The owner selects contractor(s) not bound to this Agreement to bid on work covered by this Agreement and solely and directly solicits or obtains bid(s) for such work from such contractor(s) without any involvement or participation by the employer in the selection of such contractor(s) (except as to the validity of the bids) or the solicitation or obtaining of any bid(s) from any contractor(s) regardless of whether it (they) is (are) bound or otherwise to this Agreement;
- ii) The Owner accepts bid(s) from contractor(s) not bound to this Agreement; and,
- iii) The Owner contracts or subcontracts directly with contractor(s) not bound to this Agreement without contractual obligation of the Employer for the work of such contractor(s), other than for the negligent acts or omissions of the Employer.

(e) Any failure to comply with Article 1(d) of this Agreement shall render the Employer liable for damages equivalent to those for the breach of the subcontracting provision set forth in Article 1(c) above.

(f) The Employer shall advise the owner of the provisions of Articles 1(d) and 1(e) when undertaking the construction management services contract.

15. Wark is not listed in Appendix A or anywhere else in the Provincial Agreement. Nor is there anything in the evidence before the Board which suggests that Wark has participated in the provincial bargaining or ratification process, or that the employer bargaining agency has purported to bargain on Wark's behalf in that respect. On the other hand, two of the ten contractors (Leo Boin Masonry and J.D. Masonry) which the parties agreed (on the Exhibit 6 partial job list) are union contractors, are not listed anywhere in the Provincial Agreement either. (There is a "John D. Masonry listed in Appendix "A", but we cannot assume that is the same entity as J.D. Masonry.)

16. Finally, notwithstanding all of this, Wark agrees that Local 1 never intended to abandon its ICI bargaining rights with Wark.

19. The Board rejects Local 1's submission that the agreement of the parties that Local 1 never intended to abandon the bargaining rights in issue is determinative of the abandonment issue. "Intent" is a fundamental part of the principle of abandonment, and it is inherent in the principle that a finding of abandonment depends upon a finding that the trade union intended to abandon its bargaining rights. But the intent which is important is the union's objective intent as demonstrated by its conduct during the relevant time period, and not its subjective intent as expressed after the fact when the union is responding to an assertion that it has abandoned its bargaining rights. That is, the question is: when viewed objectively, does the trade union's conduct demonstrate an intention to abandon bargaining rights?

20. The Courts have agreed that it is appropriate for the Board to apply a rebuttable presumption that a trade union does not intend to abandon bargaining rights. This merely means that abandonment must be demonstrated and is not to be assumed, and that the onus is on the party which asserts abandonment. Further, when combined with the "balance of probabilities" test which the Board applies when making findings of fact, which a finding of abandonment is, this suggests that the benefit of any doubt in that respect should be given to the union. Consequently, a trade union which contests an assertion that it has abandoned bargaining rights is deemed to be expressing a subjective intent which is assumed by the presumption. When a union repeats such a subjective intent at a hearing, it merely restates the presumption, which adds nothing to the inquiry other than confirming that one is required.

21. Accordingly, where a party alleges abandonment, which as in this case is often an employer, it must call sufficient objective evidence to rebut the presumption. If it does, the onus shifts to the union to explain its conduct and demonstrate why it is more probable than not that the objective evidence is not consistent with an intention to abandon bargaining rights. Direct evidence of the union's intent in that respect will be relevant and can be quite important to the Board's consideration of the issue.

22. This case does present an unusual feature in that we are unaware of any previous case in which an employer alleging abandonment has agreed, as Wark has agreed in this case, that the union did not intend to abandon its bargaining rights. While not determinative, this is an important consideration, and forms the factual backdrop against which the rest of the facts must be assessed and inferences drawn.

23. As is often the case when abandonment is an issue, not all of the facts and inferences lead to the same conclusion. In that respect, it is often as important to consider what facts are not before the

Board, and which inferences cannot reasonably be drawn having regard to where the onus lies, as it is to consider the facts which are before the Board, and the inferences which can reasonably be drawn.

24. It has neither been agreed nor even suggested that Wark and Local 1 entered into the 1963 agreement solely for the purposes of the unnamed project which Wark wanted to complete itself. The 1963 agreement is not written as a project agreement. It contains a subcontracting restriction which applied to the way Wark generally conducted its business, and it provides for the negotiation of a renewal collective agreement, failing which the 1963 agreement would be automatically renewed. Further, in 1970, Wark acknowledged receiving a copy of the 1963 collective agreement and there is nothing before the Board which suggests that the company took the position that it was no longer bound by that agreement. On the other hand, the parties agree that Wark's evidence would have been that since 1963 it subcontracted without regard to union affiliation. Since this is not disputed, the Board must accept this as a fact. This fact constitutes conduct which is consistent with Wark considering itself not to be bound by the 1963 agreement, even though, as the parties also agreed, between 1963 and 1977 Wark in fact subcontracted its masonry work in Local 1's jurisdiction to union contractors. Regardless of what Wark might have thought (and there is no evidence of its "thoughts"), however, it did not in fact enter into a project agreement and there was nothing in its conduct prior to 1979 which would have suggested to Local 1 that the company did not consider itself bound by the 1963 agreement.

25. By themselves, the automatic renewal provisions in the 1963 agreement do not assist Local 1. The Board has long considered that after the second automatic renewal, such provisions are ineffective for purposes of defending against an argument that the union has abandoned its bargaining rights (see, for example, *Belleville & District Builders Exchange*, [1963] OLRB Rep. May 114; *Sandercock Construction Ltd.*, [1970] OLRB Rep. July 531; *R. Reusse Co. Ltd.*, [1988] OLRB Rep. May 523). After the second such renewal, there is a positive onus on the union to satisfy the Board that it has not abandoned the bargaining rights in issue. In this case, there was no communication between Local 1 and Wark with respect to renewing or negotiating a new collective agreement. However, the 1970 correspondence with respect to the 1963 agreement suggests that the parties considered that agreement to have automatically renewed itself until at least then. On the other hand, the fact that Wark subcontracted masonry work without regard to union affiliation suggests the contrary. But there is nothing before the Board which suggests that Wark openly took that position, and its conduct, namely subcontracting to employers with which Local 1 did have bargaining rights, would not have suggested to Local 1 that anything was amiss, particularly since it is apparent that from Local 1's perspective it was the subcontracting clause in the 1963 agreement which was of primary importance since Wark was and is a general contractor which subcontracts its masonry work. Consequently, although even in circumstances like these it is both appropriate and wise for a trade union to keep the collective bargaining lines of communication open, by confirming an automatic renewal if nothing else, Local 1's failure to do so in these circumstances does not weigh as heavily against it, as it might have in other circumstances (if, for example, Wark had continued to employ bricklayers directly - see, *Toronto-Dominion Bank*, [1995] OLRB Rep. May 686).

26. The 1973 internal Local 1 listing of employers and its October 31, 1978 grievance indicate that Local 1 considered its bargaining rights with Wark to be "alive", and that it was doing something to enforce those rights. The February 20 and March 22, 1979 correspondence concerning the October 31, 1978 grievance is ambiguous. On its face, it does not suggest that Wark was challenging Local 1's bargaining rights. Reading the correspondence in light of the parties' agreement that Wark has always subcontracted without regard to union affiliation might lead one to draw such an inference. However, the reference to Wark's collective agreement with the CLAC, and the fact that the CLAC agreement does not appear to cover the employees which Local 1 asserts it has bargaining rights for, suggest that it is more likely that there was a dispute concerning the ambit of Local 1's agreement, rather than whether Local 1 had any bargaining rights at all. Without any other evidence on the point, the Board is

not prepared to infer either that Wark challenged Local 1's bargaining rights, or that Local 1 did not pursue those rights in 1979. We prefer the contrary inference.

27. Local 1's post-provincial bargaining record with respect to Wark is also ambiguous. While some 27% of Wark's masonry projects were subcontracted to non-union employers, it is not clear what proportion of Wark's work is involved. Nor is it apparent what proportion of this work, if any, involved masonry work which, pursuant to the provisions of Article 1 of the Bricklayers Provincial Agreement, Wark was not required to subcontract only to union employers. Accordingly, this evidence is insufficient to indicate that Local 1 failed to enforce the bargaining rights it asserts when it ought to have done so.

28. Similarly, although we find it troubling that Wark is not listed in the Bricklayers Provincial Agreement as one of the employers bound by it, this is less troubling than might otherwise be the case given that at least two of the employers who perform masonry work for Wark on a subcontract basis which are agreed to be bound by the Bricklayers Provincial Agreement are also not listed in it.

29. In the result, on a balance of probabilities, the evidence taken as a whole, in the context of the parties' agreement that Local 1 never intended to abandon the bargaining rights it had obtained through its 1963 collective agreement with Wark, is not sufficient to rebut the presumption against abandonment.

30. Accordingly, the Board is not satisfied that Local 1 has abandoned its ICI bargaining rights with respect to Wark. The Board therefore declares that G.S. Wark Limited is bound by the Provincial Collective Agreement between the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen, and the Masonry Employers Council of Ontario effective from July 28, 1995 to April 30, 1998.

31. The Registrar is directed to schedule this matter for hearing for the purpose of hearing the evidence and representations of the parties with respect to all other matters in issue.

DECISION OF BOARD MEMBER F. B. REAUME; October 18, 1996

1. I strongly suspect that in 1963 when the said agreement was signed it was the understanding of both parties that this was a project agreement and not intended as a binding ongoing collective agreement conveying the attendant bargaining rights for this trade with respect to G.S. Wark Limited. It was simply meant that this job would be completed using union members. This would explain the presence of a sub-contracting provision in the agreement.

2. This is not a case where the applicant union intended to abandon bargaining rights, but rather, I believe, at least initially, the union did not think that it had or wanted any ongoing bargaining rights. I also suspect that Wark's own labourers (members of the Christian Labour Union) tended for the Local 1 Bricklayers for the completion of the job in 1963.

3. However, based upon the agreed upon facts and the lack of any substantive evidence to support these suspicions, I cannot disagree with this decision.

4077-95-U Power Workers' Union - Canadian Union of Public Employees, Local 1000 and J. Caskanette, G. D. Chaffey, M. D. Collins, L. Crausen, H. R. Gillies, R. C. Hansen, G. O'Donnell, J. Stark, R. Thoms, H. Tomsett and R. R. Young on their own behalf and on behalf of all members of International Brotherhood of Electrical Workers.

Local Union 1788, Applicants v. **International Brotherhood of Electrical Workers**, Ken Woods, Allan Diggon, Tom McGreevy and International Brotherhood of Electrical Workers, Local Union 1788 by its Trustee, International Brotherhood of Electrical Workers and Ontario Hydro and Electrical Power Systems Construction Association and IBEW Electrical Power Systems Construction Council of Ontario, Responding Parties

Collective Agreement - Construction Industry - Ratification and Strike Vote - Memorandum of settlement between union and employer in construction industry made contingent on ratification - Union submitting agreement to union's accredited delegates and not to employees in the bargaining unit - Board dismissing complaint alleging that provisions of section 79 of the Act requiring employee ratification in these circumstances

BEFORE: *G. T. Surdykowski*, Vice-Chair.

APPEARANCES: *L. A. Richmond* for the Applicants; *Michael Church* for the IBEW; *A. M. Minsky* for the IBEW-EPSCCO; *Michael Wright* for the IBEW, Local 1788; *Robert Little* for Ontario Hydro and EPSCA.

DECISION OF THE BOARD; September 30, 1996

1. This is a complaint under section 96 of the *Labour Relations Act, 1995* in which the applicants alleged that the responding parties have breached sections 53, 70, 72, 74, 76, 86, 87 and 149 of the Act. In their amended request for relief, the applicants request as follows:

AMENDED SCHEDULE 'A'

RELIEF REQUESTED

- (1) A Declaration that the Responding Parties have violated the Act as set out in this application;
- (2) An Order that the Responding Parties cease and desist from violating the Act as set out in this application;
- (3) With respect to the Generation Projects Collective Agreement:
 - (a) a Declaration that there is no Generation Projects Collective Agreement in effect as the Memorandum of May 23, 1996, was not ratified in accordance with the Labour Relations Act, and in particular, Section 79 thereof;
 - (b) an Order that any Memorandum of Settlement reached be ratified in the same manner as a Memorandum of Settlement would have been ratified in April of 1995;
 - (c) a Declaration, whether or not the Memorandum of Settlement was ratified, that the Memorandum of Settlement of May 23, 1996 is of no force and effect and, in particular, is not applicable to the bargaining unit of Local 1788;
 - (d) an Order that none of the terms and conditions of the Memorandum of Settlement of May 23, 1996 be implemented in the bargaining units of Local 1788, to the extent that they constitute alterations of the rates of wages or any other term or condition of employment, or any right, privilege or duty of the employer or the employees, without the consent of the PWU, or until the

application for certification by the PWU is dismissed or terminated by the Board, or withdrawn by the trade union.

- (4) With respect to the Transmission collective agreement:
 - (a) A Declaration that there has been no legal transfer of the bargaining rights of Local 1788 to IBEW-EPSCCO in accordance with Section 68 of the Act;
 - (b) an Order that any Memorandum of Settlement reached be ratified in the same manner as such a collective agreement would have been ratified in April of 1995;
 - (c) Such further and other relief as may be required in the circumstances.
- (5) An Order that all individuals adversely affected by the actions of the Responding Parties be fully compensated by them, with interest for all damages suffered; and
- (6) Such further and other relief as may be appropriate in the circumstances.

2. On agreement with the parties, the Board heard their representations with respect to the applicants' allegation that there has been a breach of section 79 of the Act. In that respect, the parties filed an agreed statement of facts as follows:

AGREED FACTS RESPECTING SECTION 79 ARGUMENT

1. On March 15, 1996, IBEW-EPSCCO and EPSCA signed a Memorandum of Settlement for a renewal of the Generation Projects collective agreement, which Memorandum of Settlement was subject to ratification and the parties agreed to recommend such ratification to their respective principals (IBEW Documents - Tab 2). The vast majority of employees working under that collective agreement were on March 15, 1996, members of IBEW Local 1788.

2. A ratification vote was conducted by mailed secret ballot of all members of IBEW Local 1788, except those working under the Transmission collective agreement, and all other members of IBEW local unions who were working in the Electrical Power Systems Sector, or who had worked in that sector (except for working under the Transmission collective agreement), within the six months preceding the time that the vote was held, in accordance with the by-laws of IBEW-EPSCCO, Article VIII, in effect at that time, and in accordance with the practice in effect since the origin of IBEW-EPSCCO in 1980 (EPSCCO Documents - Tab 11).

3. This Memorandum of Settlement was rejected by 63% of those voting. The March 15, 1996 Memorandum of Settlement, therefore, did not become a collective agreement.

4. On May 23, 1996, a second Memorandum of Settlement respecting the Generation Projects collective agreement was signed by IBEW-EPSCCO and EPSCA (EPSCCO Documents - Tab 13). Implementation of that collective agreement was contingent upon ratification by both parties. The effective date of the agreement was on the date of ratification, unless otherwise indicated.

5. On May 23rd, 1996, John Pender, the Executive Secretary/Treasurer of IBEW-EPSCCO, presented the Memorandum of Settlement referred to in para. 4, *supra*, to a meeting of the accredited delegates of IBEW-EPSCCO for approval. On that occasion, the said Memorandum of Settlement was approved by the majority of the accredited delegates who were present (either in person or by telephone conference) who voted in favour of such Memorandum of Settlement (IBEW-EPSCCO Documents - Tab 14). None of the delegates were employees in the bargaining unit to which the collective agreement applied. None of the employees in the bargaining unit to whom the collective agreement applied were given the opportunity to vote to ratify the May 23rd, 1996 Memorandum of Settlement and none in fact voted by secret ballot or otherwise. The accredited delegates of IBEW Local 1788 who were present at the meeting cast their ballots against the approval of the said Memorandum of Settlement. These delegates had previously been appointed by the International Union to their positions as a result of the International Union's supervision of IBEW Local 1788 and were not elected or appointed by members of IBEW Local 1788.

6. IBEW-EPSCCO claims that the process it adopted for the approval on May 23rd, 1996 of the Memorandum of Settlement referred to in paras. 4 and 5, *supra*, was in accordance with Article VIII of its amended by-laws (IBEW-EPSCCO Documents - Tab 12). The said by-laws were amended effective May 22nd, 1996 by the International Union at the request of IBEW-EPSCCO (IBEW-EPSCCO Documents - Tab 10).

7. Any party to these proceedings is entitled to take the position that any of the above facts are irrelevant for the purposes of the Section 79 argument.

8. The documents referred to above shall be entered and marked as exhibits in this matter on consent of the parties.

3. The issue between the parties concerns the "ratification" of the May 23rd, 1996 Memorandum of Settlement referred to in paragraph 5 of the agreed statement of facts.

4. The following subsections of section 79 of the Act are relevant in this case:

79.(7) A strike vote or a vote to ratify a proposed collective agreement or memorandum of settlement taken by a trade union shall be by ballots cast in such a manner that persons expressing their choice cannot be identified with the choice expressed.

(8) All employees in a bargaining unit, whether or not the employees are members of the trade union or of any constituent union of a council of trade unions, shall be entitled to participate in a strike vote or a vote to ratify a proposed collective agreement or memorandum of settlement.

(9) Any vote mentioned in subsection (7) shall be conducted in such a manner that those entitled to vote have ample opportunity to cast their ballots. If the vote taken is otherwise than by mail, the time and place for voting must be reasonably convenient.

5. The applicants argue that once the IBEW-EPSCCO decided upon a ratification process which included a vote, it was required to conduct that vote in accordance with subsections 79(7) through 79(9) of the Act, and because the ratification vote which the IBEW-EPSCCO held in this case was not a vote of employees in accordance with subsections 79(7) through 79(9), the Memorandum of Settlement referred to in the agreed statement of facts has not been properly ratified and is, therefore, not a collective agreement for purposes of the Act.

6. The responding parties submit that the provisions of section 79 do not apply to non-employee ratification votes. They say that using the word "ratification" does not necessarily refer to or require ratification by employees, and that ratification can be by the principals of the individuals actually at the bargaining table which ratification may well be by some sort of vote of delegates in the case of a principal which is a council of trade unions like the IBEW-EPSCCO. The responding parties submit that to accept the applicants' position is to require a section 79 type employee ratification vote in every case, something which the Act specifically does not require in the construction industry.

7. Section 44 of the *Labour Relations Act, 1995* provides that:

44. (1) A proposed collective agreement that is entered into or memorandum of settlement that is concluded on or after the day on which this section comes into force has no effect until it is ratified as described in subsection (3).

(2) Subsection (1) does not apply with respect to a collective agreement,

- (a) imposed by order of the Board or settled by arbitration;
- (b) that reflects an offer accepted by a vote held under section 41 or subsection 42(1); or

- (c) that applies to employees in the construction industry.

(3) A proposed collective agreement or memorandum of settlement is ratified if a vote is taken in accordance with subsections 79(7) to (9) and more than 50 per cent of those voting vote in favour of ratifying the agreement or memorandum.

This is a new provision which has no precedent in the labour relations legislation of this province. Although the *Labour Relations Acts* prior to the current Act contained provisions which dealt with the manner in which employee ratification votes were to be conducted (namely, what are now section 79, and section 165 which relates to strike and ratification votes in the provincial bargaining scheme for the ICI sector of the construction industry), such votes were never mandatory. Under the current Act, employee ratification votes are mandatory - but not with respect to collective agreements which apply to employees in the construction industry.

8. There is no dispute that the May 23rd, 1996 Memorandum of Settlement relates to employees in the construction industry.

9. Accordingly, now as before (and as the applicants conceded), in the construction industry it is up to the trade union concerned to determine for itself whether or not to hold a ratification vote.

10. I note that the words of subsections 79(7) through 79(9) are not *exactly* the same as the equivalent provisions (subsections 74(4) through 74(6) in the Bill 40 Act which immediately preceded the current Act here. However, the changes to subsections 79(7) and 79(8) merely make those provisions consistent with section 44 of the current Act. There have been no substantive changes to those two provisions. In subsection 79(9), the sentence "If the vote taken is otherwise than by mail, the time and place for voting must be reasonably convenient." has been added to what was there before in subsection 74(6). This change has no bearing on the issue before me in this case.

11. Consequently, the Board's approach in jurisprudence under the various *Labour Relations Acts* which preceded the current Act remains applicable in the construction industry.

12. Accordingly, now as before, there is nothing in section 44, section 79, or elsewhere in the *Labour Relations Act, 1995* which requires a trade union to conduct a ratification vote with respect to a proposed collective agreement or Memorandum of Settlement which applies to *construction* employees. It is clear that the legislature intended to exclude the construction industry from the mandatory employee ratification (end strike) vote provisions of section 44 (and subsections 79(3) and 79(4) in the case of a strike) now in the Act. This means that trade unions continue to enjoy considerable freedom in the manner in which they conduct themselves when it comes to strikes and the settling of collective agreements which relate to construction employees. This includes the right, which all unions previously had, to adopt ratification procedures which do not include an employee ratification vote. Such ratification procedures may include ratification votes of other than employees, which as a practical matter are common in the case of councils of trade unions (which are recognized as collective bargaining entities under the Act and are common in the construction industry). Indeed, it is not uncommon for negotiating committees to put things to a vote, even when they are not negotiating for a council or trade unions. There cannot be anything improper about such votes, which are clearly not subject to the provisions of subsections 79(7) through 79(9).

13. Consequently, when it comes to construction employees, a trade union is free to choose a ratification process which includes a vote which is not a vote of employees. To put it another way, the fact that a trade union chooses to hold a ratification vote with respect to a proposed collective agreement or Memorandum of Settlement which relates to construction employees does not mean that that ratification vote has to be a vote of employees. Like its predecessor provisions, subsections 79(7) through 79(9) apply to the construction industry only when a trade union decides to hold an *employee*

ratification vote. If it does, then subsections 79(7) through 79(9) require the union to conduct the vote in accordance with the minimum standards established by those provisions (except in the ICI sector of the construction industry in which case section 165 governs the manner in which an employee bargaining agency or an employee bargaining agent which *chooses* to do so must conduct an employee strike ratification vote).

14. Cases like *Cuddy Food Products Ltd.* [1988] OLRB Dec. 1211 and the *T. Eaton Company Limited* [1985] OLRB Aug. 1309 (among others) deal with the conduct of a trade union which chooses to conduct an employee ratification vote, and do not stand for the proposition that every ratification vote must be a vote of employees.

15. Nor is it odd or surprising that this results in different treatment of construction and non-construction employees. For most of the history of labour relations in this province, the construction industry has been recognized as requiring different treatment. Accordingly, there has long been a "construction industry" section in the Act which has provided, as it does in the current Act, that where there is a conflict between the "general" provisions and the construction provisions of the Act, the latter will prevail in circumstances to which they apply. This is legislative recognition of the fact that while there are many similarities between the labour relations in the construction industry and the labour relations in non-construction endeavours, there are also significant differences between them.

16. In this case, the IBEW-EPSCCO decided not to have an employee ratification vote with respect to the May 23rd, 1996 Memorandum of Settlement. Instead, it decided to hold a vote of the accredited delegates of the IBEW-EPSCCO. It was entitled to do this and the provisions of sections 79(7) through 79(9) do not operate to require that the IBEW-EPSCCO hold an employee ratification vote in that respect, nor to the manner in which the IBEW-EPSCCO conducted its ratification vote. It remains to be seen whether the conduct complained of was otherwise improper.

17. The applicants' complaint that the responding parties have breached section 79 of the Act is therefor dismissed. The hearing will continue as previously scheduled for the purposes of dealing with the remaining matters of issue.

0856-96-M Power Workers' Union - Canadian Union of Public Employees, Local 1000 and J. Caskanette, G.D. Chaffey, M.D. Collins, L. Crausen, H.R. Gillies, R.C. Hansen, G. O'Donnell, J. Stark, R. Thoms, H. Tomsett, and R.R. Young on their own behalf and on behalf of all members of International Brotherhood of Electrical Workers, Local Union 1788, Applicants v. International Brotherhood of Electrical Workers, Ken Woods, Allan Diggon, Tom McGreevy and International Brotherhood of Electrical Workers, Local Union 1788 by its Trustee, International Brotherhood of Electrical Workers and Ontario Hydro and Electrical Power Systems Construction Association, Responding Parties

Construction Industry - Interim Relief - Remedies - Unfair Labour Practice - Applicants alleging that International union, through trusteeship has made unlawful use of local union's assets, has improperly imposed dues increase on members and has conducted itself improperly in negotiating new collective agreements to detriment of members of local union - Applicants seeking interim order staying implementation of new collective agreements - Board concluding that it is without jurisdiction under section 98 of the Act to grant the interim order sought, but that Statutory Powers Procedure Act confers jurisdiction on Board to provide

substantive interim relief, including the order sought - Board dismissing application for interim relief because of applicants' undue delay

BEFORE: *G. T. Surdykowski*, Vice-Chair.

APPEARANCES: *L. A. Richmond* for the applicants; *David McKee* for IBEW, *Ken Woods* and *Tom McGreevy*; *Robert Little* for EPSCA, Ontario Hydro; *A. M. Minsky* for IBEW-EPSCCO; *James Hayes* for IBEW, Local 1788.

DECISION OF THE BOARD; October 11, 1996

I. WHAT THIS DECISION IS ABOUT

1. By decision dated July 2, 1996, the Board dismissed this application for interim orders with reasons to follow. Here, therefore are the Board's reasons.
2. In order to put this application into context, it is necessary to briefly sketch out the history of the immediate dispute. For several years, there has been a dispute concerning work jurisdiction under the IBEW "Generation Projects" and "Transmission" collective agreements with the EPSCA. This dispute was brought to the Board in 1994 in the form a complaint by IBEW, Local 1788 alleging that the parent international union had violated what are now sections 147 and 149 of the *Labour Relations Act, 1995* by altering Local 1788's jurisdiction and interfering with its autonomy without just cause. After a lengthy hearing, that complaint was dismissed by decision dated February 9, 1996 (reported as *International Brotherhood of Electrical Workers* [1996] OLRB Rep. February 70).
3. In April 1995, the International imposed a trusteeship on Local 1788. This was the subject of further applications to the Board (Board File Nos. 4396-94-U and 4397-94-M) which were settled.
4. On April 13, 1995, the Power Workers' Union - CUPE, Local 1000 filed applications for certification to displace Local 1788 as the collective bargaining agent for employees covered under both the Generation Projects and Transmission agreements. These applications also resulted in lengthy litigation in which no final decision has been issued to date.
5. In the main application in Board File No. 4077-95-U, the applicants alleged that after the trusteeship was imposed in April 1995, Local 1788 was run by the International and its representatives or agents, without any support from the membership of Local 1788. Indeed, in March 1996, some of the applicants herein filed a complaint (Board File No. 4100-95-U) seeking to terminate the trusteeship, while the International filed an application to extend that trusteeship (Board File No. 4225-95-T). The Board refused to grant such an extension on an interim basis, and the International took the position that its trusteeship over Local 1788 had ended. It is alleged that the International appointed an Executive Board for Local 1788 and indefinitely delayed calling elections in that respect.
6. Some of the applicants herein then filed a complaint (Board File No. 0162-96-U) alleging that this conduct constituted either a new trusteeship or a continuation of the previous one, which in either event they alleged was without just cause and contrary to the Act. This last complaint was settled on terms which included a protocol for a Local 1788 election.
7. The position of the applicants is that the original trusteeship is continuing and that it will not end until a new Executive Board is elected, or in the alternative, that a new and unlawful trusteeship has been imposed. The applicants allege that the International, through the trusteeship, has made unlawful use of Local 1788's assets, has improperly imposed a dues increase on members, and has

conducted itself improperly in negotiating a new Generation Projects Agreement and a new Transmission Agreement, to the detriment of members of Local 1788.

8. Against that background, the applicants filed this interim application in which they sought the following interim orders:

- (1) An Order that the implementation of the terms and conditions of the Memorandum of Settlement respecting Generation Projects of May 23, 1996, that constitute an alteration of the terms or conditions of employment or any right, privilege, or duty of the employer or the employees from the terms or conditions of employment, or any right privilege or duty of the employer or employees that existed on April 13, 1995 be stayed until the Board determines the validity of the Memorandum of Settlement as a collective agreement in OLRB File No. 4077-95-U, or until the Board orders otherwise; and
- (2) In the alternative, an Order that the terms and conditions of the Memorandum of Settlement of May 23, 1994, respecting the seniority rights of employees in the bargaining unit, to the extent they constitute an alteration of seniority rights in effect in April 1995, be stayed until the board determines the validity of the Memorandum of Settlement as a collective agreement in OLRB File No. 4077-95-U, or until the Board orders otherwise.

9. The first issue raised in the application was whether the Board has jurisdiction to grant the interim orders sought. The applicants submitted the Board does. The responding parties submitted it does not.

10. The parties made extensive written and oral submissions. I do not intend to repeat them. Suffice to say that the responding parties argued that neither section 98 nor anything else in the *Labour Relations Act, 1995*, gives the Board jurisdiction to grant the relief sought, and that there is nothing in the *Statutory Powers Procedure Act* ("SPPA") which gives the Board any such jurisdiction either.

11. Section 98 of the Act provides that:

98. (1) On application in a pending proceeding, the Board may make interim orders concerning procedural matters.

(2) The Board shall not make an order under subsection (1) requiring an employer to reinstate an employee in employment.

12. Section 98 came into effect on November 10, 1995 when Bill 7 was given Royal Assent.

II. THE INTERPRETATION ACT

13. I note that sections 16, 17 and 18 of the Ontario *Interpretation Act* were not referred to in argument. Nevertheless they deserve some attention. These sections could be taken to mean that a court or tribunal can not consider the content of previous versions of legislation as an aid to interpreting the current legislation. They have been in the *Interpretation Act* since at least 1950. They provide that:

16. The repeal of an Act shall be deemed not to be or to involve a declaration that the Act was or was considered by the Legislature to have been previously in force.

17. The repeal or amendment of an Act shall be deemed not to be or to involve any declaration as to the previous state of the law.

18. The amendment of an Act shall be deemed not to be or to involve a declaration that the law under the Act was or was considered by the Legislature to have been different from the law as it has become under the Act as so amended.

(I note that the *Federal Interpretation Act* contains similar provisions.)

14. The rule that the legislative *history* of an enactment is not admissible as an aid to interpretation has been significantly eroded, particularly in constitutional or Charter cases. It is well established that the *evolution* of legislation; that is, the finished statutory product as it has been from time to time, can be referred to as an aid to interpreting legislation in its current form (*Gravel v. City of St. Leonard* [1978] 1 SCR 660 (Supreme Court of Canada); *Hill v. Canada (A.G.)* (1988) 48 D.L.R. (4th) 193 (Supreme Court of Canada)). And that is as it should be. After all, it is consistent with many other “rules” of statutory interpretation, including the presumption against tautology, to consider the nature and purpose of changes to a piece of legislation, one of which purposes may be to change the law. It would not be possible to do so without referring to the evolution of the statute or the particular provision in question.

15. Further, sections 17 to 19 of the *Interpretation Act* cannot mean that a legislative amendment does not change the law. It is readily apparent that that is sometimes precisely what the Legislature intends to do. What these provisions mean is that one cannot *automatically assume* that a change to legislation was intended to change the law (see, for example, *Crupi v. Canada Unemployment and Immigration Commission* [1986] 3 F.C. 3 (Federal Court of Appeal); *McGuigan v. R* [1982] 134 D.L.R. (3rd) 625 (Supreme Court of Canada); *R. v. Potvin* [1989] 68 C.R. (3rd) 193 (Supreme Court of Canada)). These provisions do not mean that one must or should ignore the past. It is patently obvious that the Legislature does change the law from time to time and it is quite appropriate to examine prior versions of legislation for the purpose of ascertaining whether the law has changed, and if so, how it has changed. Indeed, it is quite appropriate to look at successive changes in legislation to determine whether these reveal a direction, or possibly a reversal in direction, in the evolution of the legislation. This is why courts and tribunals can say that changes or lack of changes to legislation codify or reverse jurisprudence on a point, and why the re-enactment of legislation is considered to mean that the Legislature has confirmed or adopted the existing interpretation. Accordingly, when faced with a question of interpretation, courts and tribunals, including this Board, have long considered it appropriate to consider the evolution of the legislation. This comes to form part of the adjudicative “expertise” which courts and tribunals bring to bear on matters which come before them.

16. I therefor find it appropriate to compare section 98 of the present Act to the interim relief powers contained in section 92.1 of the Bill 40 Act, which was repealed and replaced by the current Act. Section 92.1 of the Bill 40 Act provided that:

92.1-(1) On application in a pending or intended proceeding, the Board may grant such interim orders, including interim relief, as it considers appropriate on such terms as the Board considers appropriate.

(2) A party to an interim order may file it, excluding the reasons, in the prescribed form in the Ontario Court (General Division) and it shall be entered in the same way as an order of that court and is enforceable as such.

III. THE QUESTION

17. In essence, the issue between the parties was whether the Board’s power to make “interim orders concerning procedural matters” under section 98 of the Act restricts the Board’s jurisdiction to orders concerning the conduct of proceedings before the Board, or whether the meaning of “procedural” in section 98(1) is not restricted to procedural matters strictly so called.

18. The essence of the responding parties’ argument was that the Board’s jurisdiction under section 98 of the Act is limited to making orders which regulate the conduct of litigation before the

Board, and that the Board has no jurisdiction under section 98 to make orders which relate to the substantive rights or obligations of the parties which may be in issue in that litigation.

19. The essence of the applicants' argument comes down to this: "concerning procedural matters" does not mean relating to purely procedural (within the common meaning of that word) matters only, and whether or not an order relates to a "procedural matter" within the meaning of section 98 depends on whether an order effectively disposes of substantive matters in issue in the litigation. That is; the applicants argued that an order which is obtained as a step in the process for enforcing substantive rights without effectively determining the final outcome of the litigation is a "procedural matter".

20. One might think that the interpretation question raised in this case is not a particularly difficult one. After all, what does "procedural" mean if not "relating to the process" rather than to the exercise of rights under the Act? Unfortunately, when it comes to questions of statutory interpretation things are often not so simple, as evidenced by the texts and jurisprudence dealing with such questions. Indeed, the "rules of statutory interpretation" do not always yield a consistent result when applied to a particular question of interpretation.

IV. THE RULES OF INTERPRETATION

21. In this case, the parties concentrated on two "rules" of statutory interpretation: the presumption against tautology; and the principle that words must be read in the context of the provision and legislation as a whole. There are many other such "rules" as well.

22. The "modern" rule of statutory interpretation can be simply stated as follows:

One must determine the meaning of legislation in its total context, having regard to the purpose of legislation, the consequences of the proposed interpretation(s), the presumptions and special rules of interpretation, and the admissible extensive aids.

(see Sullivan, Ruth; *Driedger on the Construction of Statutes*, 3rd Edition, Toronto, Butterworths, 1995, at page 427).

The interpretation given to a legislative provision must be plausible, consistent with the apparent legislative purpose, and reasonable and just.

23. Perhaps the best place to start in this case is with the modern presumptions of statutory interpretation. These presumptions, which, as the label itself suggests, are no more than assumptions which are rebuttable, and which may or may not apply depending on the circumstances, are:

1. *The Presumption of Knowledge and Competence.* That is, the Legislature is presumed to know the existing statutory law and jurisprudence, and how courts and tribunals function.
2. *The Presumption Against Tautology.* That is, it is assumed that the Legislature avoids superfluous or meaningless words, and does not *pointlessly* repeat itself. Every word is presumed to advance the legislature purpose. This does not mean that the Legislature cannot repeat itself, it means only that repetition is not to be assumed (see *Hill v. William (Park Lane) Ltd.* [1949] AC 530 at 546 (House of Lords)). Pursuant to this presumption, interpretations which render portions of a statute meaningless, pointless or redundant are to be avoided. However, this presumption is easily rebutted by suggesting cogent reasons for the redundant or superfluous words; perhaps, for example, in an "of caution" approach. Indeed, as McLachlin J. pointed out (albeit in dissent) in *Chrysler Canada Ltd. v. Canada (Competition Tribunal)* [1992] 2 SCR 394 (Supreme Court of Canada), Legislatures often use superfluous words.
3. *The Presumption of Consistent Expression.* That is, that within the same statute, the same

words have the same meaning and different words have different meanings. Statutes are not novels, and legislators are presumed to adopt a fixed pattern of expression.

4. *The Presumption of Implied Exclusion.* That is, to express one thing is to exclude another, and a failure to mention something indicates an intent to exclude it. This presumption is rebuttable by alternative explanations, competing considerations and drafting errors.
5. *The Presumption of Coherence.* That is, internal conflict is to be avoided by presuming that the parts of a statute fit together to form a rational and internally consistent framework which accomplishes the intended goal.

V. APPLYING THE RULES

24. There is no question that section 92.1 of the Bill 40 *Labour Relations Act* gave the Board a broad substantive interim authority, which the Board exercised in some cases and chose not to in others, as it considered appropriate. There is also little doubt that not every one in the labour relations community was happy with the fact that the Board had such a broad interim relief power, or with the manner in which the Board exercised that power. The conventional wisdom is that it was in response to these concerns that section 92.1 was repealed and section 98 enacted. I do not find it appropriate to consider this “conventional wisdom”, except to the extent that it may suggest what the Legislature intended to accomplish.

(a) SUPPORT FOR THE APPLICANTS’ PROPOSITION

25. When one applies the presumption of knowledge and competence, and the presumption against tautology to the words of section 98(1) in the context of the current Act as a whole, it is apparent that the current Act contains other provisions, as the Bill 40 Act also did, which give the Board all of the procedural powers it requires to conduct and control its proceedings. That is, even without section 98 under the current Act, the Board has the procedural powers it needs to supervise the litigation which is conducted before it. In that respect, subsections 110(16) to (20) provide that:

(16) The Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and to make their submissions.

(17) The Board may make rules governing its practice and procedure and the exercise of its powers and prescribing such forms as it considers advisable.

(18) The Board may make rules to expedite proceedings to which the following provisions apply:

1. Section 13 (right of access) or 98 (interim orders).
2. Section 99 (jurisdictional, etc., disputes).
3. Subsection 114(2) (status as employee or guard).
4. Sections 126 to 168 (construction industry).
5. Such other provisions as the Lieutenant Governor in Council may by regulation designate.

(19) Rules made under subsection (18) come into force on such dates as the Lieutenant Governor in Council may by order determine.

(20) Rules made under subsection (18),

- (a) may provide that the Board is not required to hold a hearing;

- (b) may limit the extent to which the Board is required to give full opportunity to the parties to present their evidence and to make their submissions; and
- (c) may authorize the Board to make or cause to be made such examination of records and such other inquiries as it considers necessary in the circumstances.

In addition, section 111(2) provides that:

(2) Without limiting the generality of subsection (1), the Board has power,

- (a) to require any party to furnish particulars before or during a hearing;
- (b) to require any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing;
- (c) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce the documents and things that the Board considers requisite to the full investigation and consideration of matters within its jurisdiction in the same manner as a court of record in civil cases;
- (d) to administer oaths and affirmations;
- (e) to accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not;
- (f) to require persons or trade unions, whether or not they are parties to proceedings before the Board, to post and to keep posted upon their premises in a conspicuous place or places, where they are most likely to come to the attention of all persons concerned, any notices that the Board considers necessary to bring to the attention of such persons in connection with any proceedings before the Board;
- (g) to enter any premises where work is being or has been done by the employees or in which the employer carries on business, whether or not the premises are those of the employer, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any matter and post therein any notice referred to in clause (f);
- (h) to enter upon the premises of employers and conduct representation votes, strike votes and ratification votes during working hours and give such directions in connection with the vote as it considers necessary;
- (i) to authorize any person to do anything that the Board may do under clauses (a) to (h) and to report to the Board thereon;
- (j) to authorize the chair, a vice-chair or a labour relations officer to inquire into any application, request, complaint, matter or thing within the jurisdiction of the Board, or any part of any of them, and to report to the Board thereon;
- (k) to bar an unsuccessful applicant for any period not exceeding one year from the date of the dismissal of the unsuccessful application, or to refuse to entertain a new application by an unsuccessful applicant or by any of the employees affected by an unsuccessful application or by any person or trade union representing the employees within any period not exceeding one year from the date of the dismissal of the unsuccessful application;
- (l) to determine the form in which evidence of membership in a trade union or of signification by employees that they no longer wish to be represented by a trade union shall be presented to the Board on an application for certification or for a declaration terminating bargaining rights, and to refuse to accept any

evidence of membership or signification that is not presented in the form so determined;

- (m) to determine the form in which and the time as of which evidence of representation by an employers' organization or of objection by employers to accreditation of an employers' organization or of signification by employers that they no longer wish to be represented by an employers' organization shall be presented to the Board in an application for accreditation or for a declaration terminating bargaining rights of an employers' organization and to refuse to accept any evidence of representation or objection or signification that is not presented in the form and as of the time so determined;
- (n) to determine the form in which and the time as of which any party to a proceeding before the Board must file or present any thing, document or information and to refuse to accept any thing, document or information that is not filed or presented in that form or by that time.

26. No one suggested any examples of purely procedural powers which section 98 could arguably add to the procedural powers given to the Board in other provisions of the Act, and it is difficult to see what section 98 could add in that respect.

27. Further, in *Highland York Flooring Company Limited* [1993] OLRB Rep. July 607, the Board in effect held that section 92.1 of the Bill 40 Act was not directed at questions of practice and procedure, and that the Board's jurisdiction to order prehearing production or make other procedural directions or orders derived from what are now sections 110 and 111 of the Act quite independent of the Board's section 92.1 interim jurisdiction.

28. Indeed, the way that section 98(2) is structured suggests that even interim reinstatement is a "procedural matter" for purposes of the provision. Why else would section 98(2) be necessary? Section 98(2) provides that the Board "shall not make an order under subsection (1)"; that is, an interim order concerning procedural matters, "requiring an employer to reinstate an employee to employment." As the applicants argued in this case, it is difficult to characterize the reinstatement of an employee as a *purely* procedural matter.

29. Consequently, reading section 98 as a whole in the context of the Act as a whole, as I am required to do, and applying the presumption of knowledge and competence, and the presumption against tautology, suggests that the Board retains a substantive interim jurisdiction, and that section 98 does not operate to restrict the Board's interim jurisdiction to purely procedural matters.

30. However, the application of the various rules or presumptions of statutory interpretation does not always suggest the same conclusion, and this is not the end of the analysis in this case.

(b) SUPPORT FOR THE RESPONDING PARTIES' POSITION

31. Prior to section 92.1 in the Bill 40 Act, there was no provision in the Act which gave the Board any substantive interim relief power. Accordingly, although the Board routinely gave orders or directions having to do with procedural matters, it did not purport to give "interim relief" in any substantive way until the Bill 40 Act, including section 92.1, was proclaimed. A comparison between the words of section 92.1 of the Bill 40 Act and section 98 of the current Act reveals several significant differences.

32. First, section 92.1(1) specified that the Board could grant interim orders "including interim relief". Section 98(1) provides that the Board can make interim orders but the phrase "including interim relief" has been dropped. This suggests that in terms of jurisdiction the Board has less now than it did under section 92.1.

33. Second, section 92.1(1) provided that the Board could put terms on its interim orders. Section 98(1) of the current Act does not. One can easily imagine how terms might be appropriate when an order affecting the very issues in dispute is made. It is equally easy to see how no such provision is required when it comes to matters concerning the conduct of a proceeding, since it follows that the Board exercises a continuing supervisory power in that respect, particularly in light of the broad procedural authority the Board has under section 111(2), for example.

34. Third, old section 92.1(2) provided that the party to an interim order could file and enforce it through the courts. Again, one could see how this might be necessary for substantive orders, but it seems completely unnecessary with respect to matters of practice and procedure since the Board is the master of its own procedure and of necessity continuously supervises its own proceedings. Further, the other places in which similar "file and enforce" provisions are found all deal with orders related to substantive rights of parties (see, for example, section 96(6) - the unfair labour practice enforcement provision; section 99(10) - jurisdictional disputes, etc. provisions; and section 102 - respecting unlawful strike or lockout declarations). Again this suggests a decreased interim jurisdiction for the Board.

35. A comparison between section 98 and the interim powers the Board has under section 99 (in subsection 5) is also instructive. Section 99 follows immediately after section 98. Section 99 also had significant amendments made to it by Bill 7. Yet the word "procedural" which is used to describe the Board's interim power in section 98(1) is nowhere to be found in section 99(5). This also suggests that interim jurisdiction the Board has under section 98(1) is different in kind from the interim jurisdiction it has under section 99.

36. I am also aware of some rather old common law jurisprudence which could be read to suggest that because procedure refers to litigation process or steps in a proceeding, everything which does not effectively amount to a final determination of the proceedings is procedural (see, for example, *Livesley v. Horst Co.* (1925) 1 D.L.R. 159 (Supreme Court of Canada); *Re: Marchant* [1908] 1 K.B. 998 (Court of Appeal); *McHarg v. Universal Stock Exchange Limited* [1895] 2 Q.B. 81 (Court of Appeal). With respect, this is not a proper reading of this jurisprudence. *Livesley v. Horst Co.*, supra, for example, was a conflict of laws case in which the Supreme Court of Canada said:

• • •

The exception embraces a very wide field, and among other things excludes procedure, because the policy of the English law recognizes no vested rights in procedure, and a party invoking the jurisdiction of the Courts must take procedure as he finds it. The concept of procedure, too, is, in this connection, a comprehensive one, including process and evidence, methods of execution, rules of limitation affecting the remedy and the course of the Court with regard to the kind of relief that can be granted to a suitor.

• • •

But in the very next sentence, the Court went on to say:

But it does not, of course, extend to substantive rights; and here questions as to substantive rights include all questions as to the "nature and extent of the obligation" under the foreign contract.

• • •

Similarly, *Brown v. Keele* [1934] 4 D.L.R. 588 (Manitoba Court of Appeal), another case sometimes cited as standing for the proposition that "procedure" is not limited to matters of *pure* procedure, contains the following passage:

• • •

Referring to the meaning of “procedure” in its application in English law under the rule that all matters of procedure are governed wholly by the law of the country wherein an action is brought (*lex fori*), Dicey’s *Conflict of Laws*, 4th ed., p. 798, says that English lawyers give the widest possible extension to it. It includes all legal remedies, and everything connected with the enforcement of a right. It covers, therefore, the whole field of practice; it includes the law of evidence, as well as every rule in respect of the limitation of an action or of any other legal proceeding for the enforcement of a right. At p. 800, he adds that an English statutory enactment, which affects both a person’s right and the method of its enforcement, establishes a rule of procedure.

• • •

That was an access or right of action case which raised a constitutional issue which had nothing to do with the substantive rights in issue between the parties. The issue was whether a provincial statute which provided for security for costs applied to a plaintiff who brought an action under the Criminal Code of the day. The Court specifically held that both laws were substantive and not procedural, and also that the provincial law did not apply to the Criminal Code.

37. Similarly, in its unanimous decision in *RJR-Macdonald Inc. v. Canada* (Attorney-General) (1994) 111 D.L.R. (4th) 397, the Supreme Court of Canada said:

• • •

Two exceptions apply to the general rule that a judge should not engage in an extensive review of the merits. The first arises when the result of the interlocutory motion will in effect amount to a final determination of the action. This will be the case either when the right which the applicant seeks to protect can only be exercised immediately or not at all, or when the result of the application will impose such hardship on one party as to remove any potential benefit from proceeding to trial.

• • •

However, this sentence is in a paragraph in which the court is discussing exceptions to the general rule that a judge should not engage in an extensive review of the merits in determining whether an interlocutory (or interim) injunction should be granted, and is within the “Analysis” section dealing with the appellant’s request for an injunction pending the disposition of the main action. While there are significant procedural elements to interlocutory injunction proceedings, there are also significant substantive elements to them. Indeed, the *RJR-MacDonald*, *supra* case deals with the request for an order suspending the operation of regulations under the *Tobacco Products Control Act*, which it seems to me is much more than a procedural matter.

38. Accordingly, even this line of cases recognizes that there is a distinction between matters of procedure and matters of substantive law, and at most stands for the proposition that procedural matters can affect substantive rights. This line of cases does not stand for the proposition that “procedural” is not limited to “procedure”. Procedure covers the field of practice, and while procedure affects the exercise of substantive rights and relates to the means by which rights disputes are disposed of, it does not cover the manner in which rights are disposed of. The latter is a substantive matter. If it were otherwise, everything would be a procedural matter, which it is clear on any analysis is not the case. It does not stand for the proposition that an order is procedural if it is not final. Many procedural orders are clearly final for purposes of procedure, and even interim orders which as a practical matter may be effectively final, are by definition not final as a matter of law. Accordingly, it is not useful to try to distinguish procedural orders from substantive orders on the basis of whether they are final or not.

39. The legislature, which must be taken to have been aware of the Board’s practices and jurisprudence, and of the evolution of the *Labour Relations Act*, could simply have repealed section 92.1 and replaced it with nothing. But it did not do that. Nor it did do any of a number of other things it might have done. However, it did replace 92.1 with section 98, a provision which is significantly

different, and which stands in sharp contrast to other provisions of the Act, including the one which immediately follows it.

40. Consequently, while interpreting section 98 as providing the Board with no substantive interim jurisdiction renders the provision somewhat redundant, I am satisfied that the Legislature intended to alter the Board's interim jurisdiction in precisely that way, and that section 98 is intended to underline that message.

VI. CONCLUSION REGARDING S.98

41. Accordingly, I find that the Board does not have the jurisdiction to grant interim relief sought by the applicants in this case under section 98 of the Act.

VII. OTHER CONSIDERATIONS

42. In arriving to this conclusion, I have considered that rights for which there are no meaningful remedies are fragile at best. But this is best considered in a debate about whether the Board should or should not have substantive interim relief powers, a debate which I do not consider it useful or appropriate to enter into in this decision. It suggests nothing about whether the Board does or does not have a substantive interim relief power.

43. I also considered that as a remedial statute, the *Labour Relations Act, 1995* should be liberally construed. But liberal construction does not mean that the Board can create its own jurisdiction. The Board's jurisdiction comes from the Act (or other applicable legislation), not out of the air or because of some perceived need for jurisdiction which the Act does not give to the Board.

44. In that respect, one variant of the "effective remedy" theme is that remedies must be timely to be effective. This is true, but does not mean that the Board has, whether by implication or otherwise, a substantive interim relief power. What it does mean, as the Board and the Courts have long recognized, is that labour relations litigation must be initiated and pursued expeditiously, and it suggests that what is required are fast final decisions, not interim decisions which do not finally dispose of disputes. Indeed, for most of its history the Board has had no substantive interim relief power. Consequently, while the Board stands ready to deal with matters brought before it as expeditiously as the resources allocated to it permit, to fashion appropriate remedies for breaches of the Act, and subject to what follows below, the Board is limited by the remedial jurisdiction the Act gives it. The Board cannot simply do whatever thinks is appropriate (for example, the Board cannot impose fines or other penalties).

VIII. THE SPPA

45. This is still not the end of the inquiry. There remains the question of the *SPPA* and how it affects the Board's jurisdiction to grant interim orders.

46. The *SPPA* includes the following provisions:

3.-(1) Subject to subsection (2), this Act applies to a proceeding by a tribunal in the exercise of a statutory power of decision conferred by or under an Act of the Legislature, where the tribunal is required by or under such Act or otherwise by law to hold or to afford to the parties to the proceeding an opportunity for a hearing before making a decision.

(2) This Act does not apply to a proceeding,

- (d) before an arbitrator to which the *Arbitrations Act* or the *Labour Relations Act* applies;

• • •

16.1 (1) A tribunal may make interim decisions and orders.

(2) A tribunal may impose conditions on an interim decision or order.

(d) An interim decision or order need not be accompanied by reasons.

32. Unless it is expressly provided in any other Act that its provisions and regulations, rules or by-laws made under it apply despite anything in this Act, *the provisions of this Act prevail* over the provisions of such other Act and over regulations, rules or by-laws made under such other Act which conflict therewith.

(emphasis added)

47. There can be no doubt that the *SPPA* applies to the Board (although equally clearly it does not apply to arbitrators under the *Labour Relations Act, 1995*). The question is whether the *SPPA*, and specifically section 16.1, affects the Board's interim jurisdiction.

48. Ontario Hydro and the IBEW-EPSCCO, supported by the other responding parties, except by IBEW Local 1788 which took no position on this issue, submitted that there is no conflict between the *SPPA* and the *Labour Relations Act, 1995*, and that section 16.1 of the *SPPA* therefor does not prevail over section 98 of the Act. Counsel pointed to *Re: Law Society of Upper Canada and Junger* (1991) 85 D.L.R. (4th) 12 (Ontario Court (General Division)), and submitted that there is no conflict between the *SPPA* and the home statute of a tribunal to which case the *SPPA* applies merely because the *SPPA* would grant the tribunal a broader power than its home statute.

49. With respect, I do not read *Junger*, supra, as standing for that proposition. What the Court said in *Junger*, supra, was that the application of section 32 of the *SPPA*, *as it then was*, was limited to procedures and hearings of the tribunal leading to a decision, and not to enforcing a decision. This conclusion is clearly *obiter*. Further, section 32 of the *SPPA* was amended in 1994. The section 32 which the court commented on in *Junger*, supra, provided that:

32. Unless it is expressly provided in any other Act that its provisions and regulations, rules or by-laws made under it apply notwithstanding anything in this Act, the provisions of this Act and of rules made under section 33 prevail over the provisions of such other Act and over regulations, rules or by-laws made under such other Act which conflict therewith.

Amended in 1994, it now reads as follows:

32. Unless it is expressly provided in any other Act that its provisions and regulations, rules or by-laws made under it apply despite anything in this Act, the provisions of this Act prevail over the provisions of such other Act and over regulations, rules or by-laws made under such other Act which conflict therewith.

50. In *Junger*, supra, the Court focused on the fact that at the time the *SPPA* contained two parts: Part I being entitled "Minimum Rules for Proceedings of Certain Tribunals"; and Part II being entitled "Statutory Powers Procedure Rules Committee", and suggested, it appears, that section 32 applied only to Part II and not to all the provisions of the *SPPA*.

51. Such a distinction is no longer sustainable. The *SPPA* still contains a Part I, which retains the title it had before 1994, but there is no Part II. Part II, and all the provisions related to the Rules Committee have been repealed. Section 32 has been retained, although in an altered form. What does it apply to if not the other provisions of the *SPPA*? Further, section 32 now expressly provides that the provisions of the *SPPA* prevail over the provisions of other legislation to which the *SPPA* applies, as well as any provisions, rules or by-laws made under that other legislation.

52. Further, I am satisfied that the argument that where a tribunal's home statute deals with the matter, there is no conflict with the *SPPA* even if the *SPPA* confers greater authority, even if the *SPPA* has not been expressly excluded, simply cannot be sustained. The purpose of the *SPPA* is to provide tribunals that applies to with a *minimum* jurisdiction. By definition, a statute which provides some lesser jurisdiction in the same area conflicts with the *SPPA*.

53. The question then becomes whether there is a conflict between 16.1 and section 98 of the *Labour Relations Act, 1995*. In this case, there will only be a conflict if section 16.1 confers interim authority which extends beyond matters relating to the conduct of the proceedings; that is, beyond purely procedural matters.

54. The words "procedural" or "relating to proceedings" (or any other derivation of the word "procedure") is nowhere to be found in section 16.1 of the *SPPA*. As in the *Labour Relations Act, 1995*, such references are found elsewhere in the *SPPA* (for example, "procedural requirements" in section 4(1); "procedural matters" in section 4.2(1); "with respect to the conduct of the proceeding" in section 5.3(3)). In addition, section 16.1(2) provides that a tribunal may impose conditions on an interim decision or order, the same sort of provision which accompanied the substantive interim relief power in section 92.1 of the Bill 40 Act, and which is found in provisions of the current Act which gives the Board substantive interim relief power (in section 99, for example).

55. Finally, notwithstanding that the *SPPA* is primarily directed at procedural matters, it is difficult to see what section 16.1 could be directed at if not substantive interim relief jurisdiction, having regard to the comprehensive procedural provisions in the rest of the *SPPA*. (Similarly, it is far from obvious that other provisions of the *SPPA*, section 21.2 for example, do not have substantive elements to them.) And unlike section 98 of the current Act, which replaced an earlier provision (section 92.1) in the Bill 40 Act with a clearly narrower jurisdiction, section 16.1 replaced nothing. It was a new provision added in 1994 which was not altered by Bill 7 (although Bill 7 did address the *SPPA* in changes it made to the *Labour Relations Act*). As such, it must have been intended to add something to the jurisdiction of tribunals to which the *SPPA* applies. I am unable to discern what that addition could be other than a substantive interim relief power.

IX. CONCLUSION

56. I am therefore satisfied that section 16.1 of the *SPPA* confers an interim relief power on tribunals, like the Board, to which the *SPPA* applies which is more than purely procedural, which gives the Board jurisdiction to give substantive interim relief. Neither section 98 of the Act, nor anything else in the Act which is directly linked to section 98, expressly excludes the operation or application of section 16.1 Of the *SPPA* (as other provisions in the Act do: see section 110(2), for example). Accordingly, pursuant to section 32 of the *SPPA*, section 16.1 of the *SPPA* must prevail over a more limited section 98. The Board therefore has the jurisdiction to grant substantive interim relief, including the relief sought by the applicants herein. (I make no comment on whether, and if so how, section 98(2) of the current Act, for example, may limit the Board's interim jurisdiction.)

X. THE BOARD'S APPROACH

57. Accordingly, I turn to a consideration of this application on its merits.

58. I begin by observing that although the Board's interim power now stems from the *SPPA* rather than from the *Labour Relations Act, 1995*, section 16.1 of the *SPPA* is written in the same broad language that section 98.1 of the Bill 40 Act was. There is no apparent reason for the Board to approach interim applications differently from the way it did under the Bill 40 Act.

59. From the outset, the Board has approached its interim relief power with caution, and the Board's approach under section 92.1 of the Bill 40 Act was still developing when that legislation was repealed and replaced by the current Act. Nevertheless, the Board's basic approach to its substantive interim relief power under the Bill 40 Act was relatively well established. In *Ombudsman Ontario* [1994] O.L.R.B. Rep. July 885, at paragraphs 7 to 13, the Board described that approach as column:

7. As the Board observed in *Loeb Highland, supra*, section 92.1(1) of the Act gives the Board a new broad discretion to intervene in any proceeding, or intended proceeding, before the Board. It has been described as an addition to the Board's remedial arsenal (*Tate Andale Canada Inc., supra*). There is nothing in section 92.1(1) which limits its use or suggest that it only be used in extraordinary cases. On the other hand, neither does it suggest that interim relief is appropriate or should be granted in every case. While interim relief is not an extraordinary remedy within the context of the present legislation, neither is it there just for the asking. On the contrary, section 92.1(1) provides the Board with a labour relations tool which is to be wielded carefully, having regard to the circumstances of each case. It is to be used like a scalpel, not like a hammer or other blunt instrument, in cases in which the Board is satisfied that there are good labour relations reasons for intervening in a labour relations dispute pending the litigation of the merits of that dispute.

8. Because section 92.1(1) is labour relations legislation intended to be used as a labour relations device, a civil litigation approach may provide some guidance, but should not be rigidly applied by the Board (see *Tate Andale Canada Inc., supra*, at paragraph 39). Similarly, when viewed as a whole, the *Labour Relations Act* in this province is unlike labour relations legislation in any other North American jurisdiction. Accordingly, the experience in these other jurisdictions is of limited assistance.

9. The Board's approach to interim relief applications has been to avoid as much as possible prejudicing the merits of the main application (which in the case of an "intended proceeding" may not even be formally before the Board). However, there will inevitably be some connection between the interim application and the main application such that some assessment of at least the apparent merits of the main application must inevitably be made.

10. In the result, a two-pronged "test" has emerged in the Board's interim relief jurisprudence to date. First, assuming the applicant's assertions to be true, is there an arguable breach of the *Labour Relations Act* (or presumably any other legislation with respect to which the Board plays an adjudicative role) for which there is a remedy which the Board is arguably empowered to give? Second, if so, does the balance of *labour relations* harm favour the granting of interim relief?

11. In *Tate Andale Canada Inc., supra*, the Board observed, in paragraph 52, that:

"... where the employer bears the legal onus of establishing that it has *not* contravened the Act, it is hardly surprising that the union request that the "pre-discharged" status quo be maintained until the employer meets the statutory onus cast upon it. If the employer is obliged to establish that its removal of the employees from the workplace was *not* unlawful, there is nothing counter-intuitive about keeping them there until it does so ..."

(emphasis added)

This comment must be read in the context of the situation before the Board in that case; namely, the discharge during an organizing campaign of employee organizers, and not as a suggestion that the onus in interim proceedings necessarily lies with the party which bears the onus in the main application - which may not even have been brought. There is nothing which absolutely prohibits discharges or layoffs prior to certification, before a first collective agreement, or between collective agreements. Nor is there anything which requires that a discharged or laid off employee must be reinstated on an interim basis in such circumstances.

12. The two-pronged test developed by the Board suggests that at least the initial onus is on an applicant for interim relief to satisfy the Board that interim intervention is appropriate. Consequently, an applicant must plead an arguable or *prima facie* case. This is not a particularly onerous hurdle since an applicant should be able to describe its allegations in a manner which suggests that it may have something to complain about. Further, an applicant must establish that interim relief is

appropriate; namely, that it will suffer some substantial labour relations harm unless the Board intervenes pending the disposition of the application it has pleaded on its merits. This is not terribly onerous either, since it only requires an applicant to explain why it seeks interim relief and what labour relations harm will occur if it does not obtain the interim relief it seeks. In determining whether interim relief is appropriate, the Board also looks to the responding party's assertion of harm to see whether there is any countervailing labour relations harm which makes interim relief inappropriate. That is, the Board weighs the respective harms and assesses whether interim relief is appropriate.

13. Because of the wide variety of proceedings and circumstances in which interim relief may be sought, a flexible approach to the two-pronged test is indicated, so that the appropriate labour relations result may be achieved in each case.

(See also, *Beef Improvement of Ontario Incorporated* [1994] O.L.R.B. Rep. April 341, application for reconsideration dismissed June 3, 1994, unreported; *Vistamere Retirement Residence* [1994] O.L.R.B. Rep. Sep. 1274.)

60. There is no obvious reason why the Board's general approach to applications for interim orders should be different now, even though its substantive interim jurisdiction comes from the *SPPA* and not the *Labour Relations Act, 1995*. I observe that although the Boards' authority now derives from a statute of general application rather than from its constituent statute, that authority is nevertheless appropriately exercised having regard to the framework and context provided by the constituent statute; that is, the Board must look to the *Labour Relations Act, 1995* for guidance with respect to the exercise of its interim authority. In other words, although the legal foundation for the Board's interim relief jurisdiction has shifted to the *SPPA*, the exercise of that jurisdiction must be informed by the current Act (and not by the Act as it was prior to November 10, 1995).

61. The labour relations rights, duties and obligations under the Bill 40 and other previous versions of the Act have not been fundamentally changed by the current act. The fundamental purpose of the Act remains to facilitate collective bargaining between employers and trade unions that are the freely designated representatives of employees, and to promote the expeditious resolution of workplace disputes. Employees continue to have the right to join or not join trade unions, to support or oppose trade unions, and to be free from threats, intimidation or coercion with respect to the manner in which they choose to exercise their rights under the Act. Unions continue to have right to organize employees free from interference by employers or persons acting on their behalf, and to represent and bargain on behalf of the employees they represent. Employers also continue to have the rights they had before, including the right to freely express themselves (subject to the limitations in the Act), and to be free of work stoppages except as provided for in the Act.

62. Accordingly, I think it appropriate to continue down the same path the Board embarked upon under the Bill 40 Act modified as appropriate by the legal regime established by the current Act (and not be conventional wisdom or the sensibilities of some interest group). This path will continue to evolve and develop, and the Board will continue to recognize that requests for interim orders must be made in a timely manner, and that relief obtained through an interim order is extraordinary in the sense that it is relief which is given without any finding on the merits, and to which the receiving party may ultimately not be entitled, in circumstances where the Board has no costs jurisdiction to alleviate the burden which an interim order may cause to a responding party which ultimately prevails. Accordingly, the Board must continue to exercise caution, and be sensitive to the potential for harm in circumstances where the best alternative is generally a fast disposition of the dispute on its merits rather than on some interim basis. Nevertheless, there will continue to be cases where substantive interim orders are appropriate for labour relations reasons.

63. It is from on this perspective that I turn to the merits of the application.

XI. THE MERITS

64. First, I note that this is but one more piece of an extensive litigation puzzle involving the internal workings and organization of the IBEW, its various construction Locals and the IBEW Electrical Power Systems Construction Council of Ontario ("IBEW-EPSCCO"), and the EPSCA and Ontario Hydro, a struggle in which the Power Workers Union, with whom former representatives and members of the IBEW, Local 1788 are now associated, has become involved through applications for certification in which the PWU seeks to displace IBEW Local 1788 as bargaining agent.

65. In essence, the applicants, which are the PWU and individual members of the IBEW Local 1788 who support the PWU, allege that "Ontario Hydro/EPSCA and IBEW-EPSCCO" have negotiated and entered into a collective agreement in a manner which is contrary to sections 86(2), 87(2), 79, and 149 and 74 of the Act, for purposes of this application, by destroying the seniority rights Local 1788 members have enjoyed for some 40 years. (I note that with respect to section 74, section 99(5) of the Act gives the Board a broad interim relief jurisdiction. It is not necessary to resort to the *SPPA* in that respect.) They allege that the immediate impact on the applicants is the loss of the right to bump on a province-wide basis, and to retain seniority if they are hired from the out-of-work list. They allege that the harm to the PWU is a perception that it is unable to protect its supporters.

66. Although it is not entirely clear that the applicants have a clearly arguable case on all the breaches of the Act they allege, they clearly do on some of them. Due to the disposition of this application, I find it unnecessary to delve into that question further. Suffice is to say that I consider that the applicants made out enough of an arguable case for me to address the second prong of the test which the Board has developed; that is, balancing the harm which would likely result if the orders requested are not granted on one hand, and if they were granted on the other.

67. I was not satisfied that the applicants had pointed to any actual harm which had or is about to occur. On the contrary, the harm alleged was entirely speculative.

68. Further, although the harm being alleged by the applicants had broader labour relations elements in it, it was primarily personal so far as the individual applicants are concerned. If there is one thing that is clear from the Board's interim jurisprudence, it is that the interim power is to be used for labour relations reasons, not personal ones, however significant these may seem to be to the individuals involved. Accordingly, it will generally be inappropriate for the Board to grant interim orders with respect to personal harm issues (see, for example, *Morrison Meat Packers Ltd.* [1993] O.L.R.B. Rep. April 358). This is particularly true where, as I am satisfied is the case here, any harm which may be suffered by the individuals can be remedied if the applicants are ultimately successful. In that respect, I reject the applicants' assertions that it will be impossible to fashion appropriate remedies for the seniority rights problems, although I do not deny that some difficulties may be presented.

69. Nor was I persuaded by the applicants "chilling effects" arguments with respect to the PWU's applications for certification. Those applications have been made and representation votes have been held (although the ballot boxes have been sealed pending the outcome of the litigation of various issues, which litigation has progressed much more slowly than anyone involved, including myself as the Vice-Chair seized with that litigation, would like). It is not at all clear what chilling effect, or other harm, which has not yet occurred in any event, there could be here in that respect, and it is insufficient to establish a labour relations harm which would form an appropriate basis for the interim orders sought.

70. On the other hand, I was satisfied that granting the orders sought could create significant labour relations problems for the collective bargaining parties whose conduct is challenged by the applicants, by upsetting the collective bargaining balance they have sought to achieve, and could at the

same time have the same kind of negative impact on members of other IBEW Locals which the applicants complain of.

71. Finally, there is the question of delay. It may be that the delay in this case, which on the applicants' own materials is at least three weeks (from May 24, 1996 when it is alleged that IBEW Local 1788 stewards were advised that a collective agreement which have been rejected by the membership was going to be signed by the IBEW-EPSCCO, to June 17, 1996 when this application was filed), but it could be viewed as being as long as thirteen weeks having regard to the history of internal acrimony which gives context to the particular circumstances (from May 24, 1996 when a Memorandum of Settlement which allegedly contained concessions, including the stripping of seniority rights which the applicants complain of, until June 17, 1996).

72. A delay of three weeks would not have caused me to dismiss this application without considering it on its merits. Nor would it otherwise have caused me any great concern. Parties are entitled and expected to consider and formulate their positions before coming to the Board. However, I did find it appropriate to consider the longer period of thirteen weeks, when it ought to be apparent to the applicants that the matters they complained of in this interim application were a concern, as a factor in assessing the merits of the application (as the Board has done on other cases: see *William Neilsen Ltd.* [1994] O.L.R.B. Rep. March 326; *Price Club Canada Inc.* [1993] O.L.R.B. Rep. July 635; *Morrison Meat Packers Ltd.*, supra).

73. As I already indicated above, a fundamental purpose of the *Labour Relations Act, 1995* which has remained constant throughout the legislative history of the *Labour Relations Act* in Ontario is to facilitate collective bargaining and promote the expeditious resolution of workplaces disputes.

74. Further, it is well accepted that "labour relations delayed are labour relations defeated and denied", and it is therefore important that labour relations litigation be commenced and pursued with reasonable diligence. (In that respect see the comments of Supreme Court of Canada in *Dayco (Canada) Ltd. v. CAW-Canada* [1993] 2 S.C.R. 230 at pages 306 to 307.)

75. It is particularly important that a request for interim relief be made in a timely manner. Such relief this "extraordinary" in the sense that it is relief which is given notwithstanding that there has been no hearing or decision on the merits of the case, and is relief to which the receiving party may not be entitled in the result. Accordingly, it is appropriate for the Board to take any delay in making or pursuing an application for interim orders into account when considering whether interim relief is appropriate, or when considering whether it will entertain such an application on its merits.

76. This does not mean that the party must or should come to the Board at the first sign of trouble. It is quite appropriate for a party to take some time to consider its options, and to pursue a non-litigation resolution of the dispute. It is almost inevitable that some time will pass between the time when a dispute arises and an application for an interim order is made. The question is not whether the party has delayed in coming to the Board, but rather whether there has been *undue* delay in pursuing an application to the Board.

77. In this case, history suggests that there was no reasonable prospect for any resolution between the parties. Further, the dispute involves a complex collective bargaining situation. Even at its simplest, collective bargaining is a process in which the Board is reluctant to intervene, but if intervention is necessary or appropriate, it should occur at the earliest possible stage and not, if at all possible, after the process has come to fruition in the form of a collective agreement.

78. In this case, I considered the applicants delay to be undue in the circumstances.

79. In the result, and having regard to all the circumstances, including the timing of the filing of this application, I was not satisfied that it was appropriate to grant the interim relief requested. In the exercise of the Board's discretion I therefore dismissed the application.

0333-96-U; 0377-96-U A Group of Employees of J.P. Murphy Inc., Applicants v. Retail Wholesale Canada Canadian Service Sector, Division of the United Steelworkers of America, Local 448, Responding Party v. **J.P. Murphy Inc.**, Intervenor; United Steelworkers of America, Applicant v. J.P. Murphy Inc., Responding Party v. Nancy Milano et al, Intervenor

Practice and Procedure - Union objecting to presence of court reporter at Board proceeding - Board permitting employer's counsel to make use of court reporter subject to certain conditions - Board also imposing conditions on use by employer counsel of written transcript of proceedings

BEFORE: *Christopher Albertyn*, Vice-Chair, and Board Members *W. H. Wightman* and *Pauline R. Seville*.

APPEARANCES: *C. J. Abbass* and *Chantal Couture* for *Nancy Milano et al.*; *B. Shell*, *P. Turtle* and *R. Barron* for United Steelworkers of America; *A.P. Tarasuk*, *Allison Whyte*, *S. Murphy* and *J. Murphy* for J.P. Murphy Inc.

DECISION OF THE BOARD; October 16, 1996

1. The title of this proceeding in Board File No. 0333-96-U is amended to describe the responding party as: "Retail Wholesale Canada Canadian Service Sector, Division of the United Steelworkers of America, Local 448".

2. The union claims that the company is bargaining in bad faith by refusing to sign a collective agreement negotiated by them. It seeks an order under section 96 of the *Labour Relations Act*, 1995 requiring the company's signature of the agreement, alternatively an order that the agreement reached is binding upon the parties. The company relies upon allegations made by the group of employees against the union as the basis for its refusal to sign the agreement. The group of employees contend that the union's ballot of the employees of the company on April 10, 1996 was not valid and that it did not provide the union with the ratification vote it required to conclude the collective agreement with the company. Those are the issues in these applications. The evidence to be heard in the case is germane to both applications so, at the request of the parties, the applications have been consolidated and they will be heard together. Several days have been set aside for the hearing of evidence and argument, in December 1996 and January 1997.

3. At the start of the hearing an issue arose which this decision addresses. An oral ruling was made at the time and this decision somewhat reconsiders and alters, and somewhat amplifies, that ruling. The company's counsel sought to make use of a court reporter during the course of the hearing. The court reporter is an official, registered court reporter and she brought tape recording and stenographic equipment with her to the hearing with the intention of making an accurate recording of all that is to be said in the proceedings. The union's counsel objected to her presence and sought an order that she be excluded, alternatively that the union be provided with a copy of a transcript of her record at the cost of the company. The company's counsel contended that he has had no difficulty being

accompanied and assisted by a court reporter in the past in Board and other tribunal hearings and that he needed her services to take notes on his behalf. He referred to previous rulings by the Board and by an adjudicator under the *Employment Standards Act* which permitted him to proceed in the manner he intended, despite objection. He referred to the work of the court reporter as being the taking of his private notes of the proceedings for his personal use in the preparation and conduct of his client's case.

4. The company's counsel was willing to undertake that the court reporter would not interfere in any manner in the proceedings and, since her recording would not be the Board's official record of the proceedings, there would be no interruption if the reporter missed anything said. Counsel suggested that if he were obliged to furnish a copy of the transcript of the proceedings to the union's counsel, then the transcript should be treated as the official record of the hearing.

5. The union's counsel argued that the production of a verbatim transcript of the proceedings by the court reporter diminished the Board's control over the proceedings. For that reason he suggested the company's counsel should not be permitted the services of a court reporter. Her record of what is said is necessarily more authentic, definitive and reliable than the notes of any other person, including those of the Board. The court reporter's record and transcription of the evidence are really not "notes" at all, but a verbatim record of what was said. The transcription necessarily has weight, even if the Board treats its own notes as the official record, as it has always done. One party having a 'record', which is doubtless more accurate than any other, will loom over the Board's record of the proceedings as a constant challenge to the Board's control over, and regulation of, the proceedings.

6. The union's counsel suggested too that he would be prejudiced in the conduct of his case by the company's counsel being in possession of a more accurate verbatim record of the proceedings than he was capable of producing through his own notes, or through those of his assistant. The company's counsel responded by suggesting that the union could readily engage its own court reporter and its counsel would then be as well placed as he, in his role as the company's counsel, had chosen to be. The issue is a matter of resource allocation - if a party is willing to incur the cost of using a court reporter then it will have the benefit of a verbatim transcript, if not then that party should be content with its own attenuated or abbreviated notes. Counsel suggested that the taking of a complete recording was not as much a priority for the union as it was for the company, otherwise it would itself have engaged the services of a court reporter.

7. At the hearing a majority of this panel (Board Member Wightman dissenting) ruled in a manner which substantially accepted the union's submissions. One option available to the Board was to prevent the company's counsel from making use of a court reporter at all. Its merit is to prevent the proceedings of the Board from becoming too formalized, too court-like and hide-bound. The Board is a specialist tribunal which is meant to be readily accessible to workers and employers alike and procedural rulings which increase legalism and formality should be discouraged. This option was weighed against the prejudice to the company's counsel in limiting the manner in which he prefers to conduct his client's case and we resolved that our concerns for the increased formality and juridification of the proceedings were outweighed by our concern that the company not be prejudiced in the conduct of its case in the manner it considers optimal. We therefore resolved to permit the company's counsel to make use of the court reporter to keep a record on his behalf.

8. We then considered what the status should be of the record kept by the court reporter engaged by the company. The company's counsel suggested that if it were obliged to give a copy of the court reporter's transcript to the union's counsel, then that transcript should be treated as being the official record of the proceedings. We were unanimously of the opinion that there are compelling reasons why the Board's usual practice should not alter. The official record of the Board is contained in the pleadings and in the Board's ultimate decision on the merits. The Board does not have regard to an

extraneous record for the reasons that the Board then retains control over the conduct of the proceedings and it does not pass any aspect of that control to an extraneous third party (the court reporter); the relative informality of Board proceedings is retained; there are no interruptions during the hearing of the case to ensure that the court reporter's record is complete and accurate; the costs of engaging the services of an official court reporter are not incurred and there is no issue as to who should pay for those costs; there is no delay occasioned by the need to have the court proceedings transcribed. Hence part of our ruling was to the effect that the record kept by the company's court reporter was not to be an official record and that it will have no status in these proceedings.

9. We then addressed the union's alternative request. It sought an order that its counsel be provided with a copy of a transcript of the proceedings produced by the court reporter for the company's counsel. Subject to the conditions mentioned below, a majority of the panel (Board Member Wightman dissenting) ruled that that request ought to be granted. We made that ruling partly because, notwithstanding the court reporter's record having no standing as the Board's record, that did not render it a worthless document for all purposes. The references by the company's counsel to the gathering of 'private notes' and 'personal notes' were somewhat coy and euphemistic descriptions of the work done by a court reporter. The production carried out by a court reporter is much more than merely the gathering of 'personal' or 'private' notes. A court reporter's record purports to be a careful, comprehensive, verbatim and accurate record of all that is said during the course of a hearing. It makes a claim to authenticity, despite the company's counsel's endeavours to describe its value far more modestly. The claim to authenticity is somewhat undermined by our ruling that the court reporter may not interrupt the proceedings to correct any error or complete any omission, but the claim is not thereby vitiated altogether.

10. We considered too the balance of convenience as between the grant and the refusal of the union's request. We were satisfied that the prejudice to the union being deprived of a copy of the transcript outweighed any prejudice to the company in being obliged to provide a copy of the transcript to the union at the union's expense. The company will not be put to any greater cost as a consequence of our ruling and it will not be prejudiced by our order.

11. For these reasons we ruled that the company must provide the union with a copy of the transcript of evidence produced by the court reporter, subject to the certain conditions.

12. Upon reconsideration of the matter following the hearing, the Board has decided to amend its previous oral ruling in the following respects. To the extent that the transcript is purely an aide-mémoire and no reference whatsoever will be made to it at the hearing, either during the course of evidence or in argument, then it is not necessary for the company's counsel to provide a copy to any other party. However, should the transcript be the focus for any discussion, comment, reference or submission, and not just an aide-mémoire to the company's counsel, then copies thereof should be made available to the other parties and to the Board, just as any relevant document would need to be produced for the Board and the other parties.

13. The business which employs the court reporter charges an hourly rate for the time she will spend at the hearing and then it charges an amount for the first copy of a transcription of the record. It charges a lesser amount for each subsequent copy. It retains copyright over the transcriptions it produces.

14. In our order we do not require the company to make use of a court reporter or to produce a transcript of the court reporter's recording of the evidence and argument. That is a matter to be decided by the company and its counsel. If a transcript of the proceedings, or any portion thereof, is produced and referred to in the hearing then, firstly, the company's counsel must give prior notification thereof to the union's counsel in writing and furnish the union with a copy of whatever part of the court reporter's

record is reduced to writing and transcribed. The union will pay for that copy and it will do so at the court reporter's rate for additional copies of the transcript. Secondly, the company's counsel must, at the company's expense, furnish the Board with three copies of the transcript for the members of the panel.

15. In the result we make the following ruling:

- (a) the company's counsel is entitled to make use of a court reporter and of her recording equipment during the course of the hearing;
 - (b) the activities of the court reporter will not in any manner impede, delay, hinder or interrupt the proceedings;
 - (c) should the company's counsel intend to refer to the written transcript of the proceedings, or any portion thereof in the hearing, then:
 - i. that transcript shall not be a record of these proceedings;
 - ii. the company's counsel shall in writing notify counsel for the union and counsel for the group of employees of the extent of the transcription, and his intention to make reference to the transcript;
 - iii. the union and/or the group of employees may then require the company's counsel to obtain an additional copy or copies of the transcript produced for their use, provided that the cost of such additional copy or copies shall be paid by the party making the request;
 - iv. the request for a copy of the transcript from the company's counsel may be made at any stage after receipt of the notification referred to in sub-paragraph ii above;
 - v. reference may not be made to the transcription until the other parties have had a reasonable opportunity to obtain a copy thereof; and
 - vi. the company's counsel shall at the company's cost provide three copies of the transcript to the Board prior to any reference thereto.
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0550-96-R; 1001-96-U International Brotherhood of Electrical Workers, Local 402, Applicant v. Ken Anderson Electric Inc., Responding Party

Certification - Construction Industry - Employee - Representation Vote - Board not accepting employer's submission that employees not employed on the certification application filing date should be entitled to cast ballots in representation vote - Board finding contested employee to be employed in bargaining unit on application date - Board directing Registrar to have ballots counted in accordance with its decision

BEFORE: *G. T. Surdykowski*, Vice-Chair, and Board Members *F. B. Reaume* and *J. Redshaw*.

APPEARANCES: *U. Boylan*, *Gary Hogan*, *Bruce Dare* and *Jim Dick* for the applicant; *Elizabeth Keenan*, *Ken Anderson* and *Pam Anderson* for the responding party.

DECISION OF G. T. SURDYKOWSKI, AND BOARD MEMBER J. REDSHAW; September 18, 1996

I Introduction

1. Board File No. 0550-96-R is an application for certification in the construction industry. Board File No. 1001-96-U is a complaint under section 96 of the *Labour Relations Act, 1995* in which the applicant trade union alleges that the responding employer has committed certain unfair labour practices. The application and complaint were scheduled to be heard together. However, despite the fact that unfair labour practice complaint refers to and in a sense arises out of the certification application, no section 11(1) relief is claimed in the complaint with respect to the application, and neither the allegations nor any possible result in the complaint would otherwise impact upon the application. Indeed, the Board proceeded to hear the application alone and upon inquiring of the parties at the conclusion of that hearing was advised by counsel that the complaint had been settled.

2. The following therefor deals with the certification application only.

3. By decision dated May 23, 1996, a differently constituted panel of the Board determined that the applicant is a "trade union" and an affiliated bargaining agent of a designated employee bargaining agency under the Act. That panel also determined the bargaining unit and that not less than forty percent of persons in the bargaining unit proposed by the applicant (which was agreed to by the employer) were members of the applicant at the time the application was made. The Board therefor directed that a representation vote be taken, and a vote was held on May 28, 1996.

4. However, there was a dispute between the parties concerning who was entitled to vote. Accordingly, the ballots cast were segregated and the ballot box was sealed. A hearing was scheduled to deal with the vote issues. That hearing was scheduled for Toronto, something which also became an issue.

5. There was no dispute between the parties with respect to which employees were actually at work on the day the application was made. Nine ballots were cast. The parties agree that Jim Dick and Gary Gazankas were entitled to cast ballots. The right of all seven other persons who voted was originally in dispute.

6. The applicant challenged Kelly Smith's right to participate in the vote on the basis that he is neither a journeyman electrician nor a properly registered apprentice in the trade. The employer challenged Bruce Dare on the basis that he was not an employee of the company on the day the application for certification was made. The employer asserted (as did the individuals themselves in correspondence to the Board) that the ballots cast by Harry Delorme, John Bouchie, Jeff Neufeld, Kenneth Forsyth and Wade Kolmel should be counted notwithstanding that they were not at work in the bargaining unit on the day the application for certification was made. The applicant took the contrary position.

II Venue

7. By letter dated July 9, 1996, Gary Gazankas and Kenneth Forsyth requested that the hearing scheduled by the Board be held in Kenora or Thunder Bay instead of in Toronto. In the alternative, they

suggested that they be allowed to express their views by teleconference call on the hearing date, or that their earlier correspondence be notarized and considered by the Board. This reference to earlier correspondence is to a June 3, 1996 letter from Mr. Forsyth and a June 5, 1996 letter from Mr. Gazankas in which they expressed their views on the application. The Board also received letters with respect to the application from Harry Delorme (who sent two letters, one dated June 3 and one dated June 5, 1996), John Bouchie (dated June 2, 1996), and one page of what apparently was a two page letter from Wade Kolmel (dated June 2, 1996).

8. The hearing was convened in Toronto on July 16, 1996 as scheduled by the Registrar. The applicant and employer attended the hearing. None of the individuals who had communicated with the Board as aforesaid appeared. The Board proceeded with the hearing on July 16, 1996 (which hearing continued on July 17 and 18, 1996). The Board understands why the persons who sought to have the hearing held in Kenora or Thunder Bay made that request and is not without sympathy for their situation. However, for several years now that Board's policy has been that hearings in all certification cases (as well as in many other kinds of cases) are held in Toronto. This policy was instituted as a result of scheduling and budgetary concerns. Whether or not the scheduling concerns remain, it is clear that the Board's fiscal situation is worse now than when the policy was instituted. The days of plenty when the Board travelled wherever and whenever it was requested to do so are long gone. The Board is simply not in a position to be responsive to such requests except in a limited number of cases (and even this may have to change). Accordingly, the Board has had to institute a travel policy, which applied to this case meant the hearing was held in Toronto.

9. Further, the Board did not consider it appropriate to conduct a hearing partly by teleconference and partly in person before the Board.

10. The Board was prepared to and did consider the correspondence which was received from individuals who did not attend the hearing to the extent that this correspondence contained representations with respect to the issue of whether persons other than employees that work on the bargaining unit on the certification application date should be allowed to vote. However, the Board cannot accede to the request, which was repeated at the hearing by the employer, that the Board consider anything in that correspondence as evidence with respect to the issue of Bruce Dare's entitlement to vote (which turned out to be the only issue on which the Board heard evidence). Such correspondence, which contains statements not given directly to the Board and not subjected to cross-examination, does not constitute evidence, and can be given no weight by the Board. (We note that as it turned out the employer took substantially the same position and made substantially the same representations as are contained in the correspondence from the individuals who wrote to the Board.)

III Voter Eligibility - The Date of Application Test Revisited

11. Turning to the voter eligibility issue, it was eventually agreed by the employer and the applicant that Kelly Smith and Wade Kolmel were not entitled to vote because they were neither journeymen nor registered apprentice electricians in Ontario. Under the *Apprenticeship Act*, the trade of electrician is a compulsory certified trade in Ontario. That is, a person must be a journeyman or registered apprentice in Ontario in order to lawfully work in the trade in this province. (See, *P & M Electric (1982) Ltd.*, [1989] OLRB Rep. June 638).

12. The facts regarding the eligibility of Harry Delorme, John Bouchie, Jeff Neufeld and Kenneth Forsyth are straightforward and were not in dispute for purposes of the issue of the entitlement to vote of persons who were not at work in the bargaining unit on the date of application. It was agreed that all four of these persons were employees of the employer on the date of application, and that none of them were at work on that date because they had taken the day off as "lieu time", in accordance with

the employer's policy of allowing employees to work and "bank" extra hours to be taken as paid time off later.

13. The employer recognized that in construction industry application for certification the Board's approach, which counsel referred to as a "policy", is to limit voter eligibility to those employees at work in the bargaining unit on a certification application date. However, counsel argued that the Board should not apply its "policy" by rote and that it was appropriate for the Board to depart from its usual approach in this case. Counsel argued that this is not a transient work force, that the four employees in issue would have been at work on the application date but for taking a lieu day which they had earned in order to give themselves an extra long weekend. The employer argued that it is appropriate for the Board to re-examine its former eligibility "policy" in light of the new purposes in section 2 of the *Labour Relations Act, 1995*, and the fact that the certification process is now vote based. The company suggested that the Board's approach is unfair because it allows a union to avoid dealing with an employer's real work force and that that is what the applicant seeks to do in this case.

14. The employer asserted that in this case at least the date of application snap shot approach does not provide a representative or true picture of the employer's work force, and applying that approach to this case is inconsistent with the purposes of the Act. Counsel argued that all persons with a demonstrable employment connection to the employer should be permitted to express their wishes with respect to an issue which will affect them so directly and that a union, in this case the applicant, cannot be prejudiced by having the wishes of the very persons its seeks to represent tested, particularly where those very employees have expressed a strong desire to be heard.

15. In response, the applicant submitted that there was no reason, either generally or in this case, for the Board to depart from its "usual practice".

16. Upon considering the representations of the parties, the Board ruled, orally (and with Board Member Reaume indicating he may issue a separate opinion, as he does herewith), that notwithstanding the able submissions of counsel for the employer only those employees at work in the bargaining unit on the date the application for certification was made were entitled to vote. As indicated in our oral ruling would be the case, the Board's reasons follow.

17. It appears that one thing needs to be made clear from the outset. The Board's approach to "who counts" and voter eligibility in construction industry applications for certification is more than a "policy" or a "practice" or a "rule of thumb". It may have been appropriate to describe the Board's approach in such terms in the past, but the fact is that the Board has determined that, in the construction industry, persons/individuals/employees in the bargaining unit at the time the application was filed means only those persons who were employees of the responding employer who spent a majority of their time at work in the bargaining unit on the day the application for certification in question was made. This is the interpretation that the Board has given to the statutory language, and it is an interpretation which has stood the test of time.

18. The basis for the Board's approach, which has been in effect for over forty years, is well established. In *Smiths Construction Company*, [1984] OLRB Rep. Mar. 521, the Board dealt with an employer submission that the Board should depart from its then thirty year old practice of "counting" only employees at work on the date of application as follows:

8. The Act requires the Board to ascertain the number of employees in the bargaining unit at the time the application was made. There are no legislated criteria to guide the Board in this task, but, of course, there is really no difficulty in respect of those individuals both employed *and working* on the application date. The problem arises in respect of individuals who may, in some sense, be considered "employees" but who may not have been at work on the application date and may not

return to work for some time thereafter, if at all. Employees on sick leave, maternity leave, long-term disability, workers' compensation, or layoff may fall into this latter category, as do the employees of a firm with a work force which fluctuates from day to day.

9. The construction industry poses special problems. Employment is necessarily transitory. Employees are quite literally "here today and gone tomorrow". A construction project is completed in phases, so on any given day the mix of tradesmen on a site may be different. Moreover, there are always the exigencies of the market, collective bargaining difficulties, the weather, and the proverbial "snafu". Collective bargaining problems, jurisdictional disputes, controlled subcontracting arrangements, the availability of financing, and the dispersement of mortgage monies will effect the level of employment in any given trade at any particular time. So will the weather. A period of intense cold or rain will interfere with construction work and reduce the number of employees on the site until weather conditions improve. Likewise, bottlenecks, problems, or the possibility of missing a time limit or deadline may require the employment of more tradesmen to resolve the difficulties or get the project back "on the rails" even though such employment may only be on a short-term basis. For all of these reasons an employer's complement of employees may vary markedly from day to day so that, in the construction industry, it is very difficult to pin down with any precision those individuals who should be treated unequivocally as "employees" for the purposes of the *Labour Relations Act*. That is why, in the construction industry, the Board need not have regard for any increase in the employer's work force after the application for certification. And, of course, this inevitable fluctuation in the employee complement underlines the importance of the expeditious resolution of applications for certification. If there is any significant delay there will be a real possibility that any certificate ultimately issued will affect employees who were not even there when the application for certification was made. The union's support will have evaporated and bargaining rights will be largely academic. This possibility also exists in manufacturing enterprises but is minimized by the relative stability of employment over the time frame when a certification application is likely to be before the Board. Such is not the case in the construction industry.

10. To cope with these special problems in the construction industry, the Board has developed a particular rule of thumb as to the way in which it should ascertain the number of employees in the bargaining unit at the time the application was made. The Board determines the employee complement to be that which exists on the application date - fully realizing that the number may well be different the day before, or the day after and that, for example, if the application date is a rainy day, the union may find that its members are not at work so that its application may be dismissed. This "rule of thumb" has been accepted and applied by unions and employers in the construction industry for thirty years - and for a very practical reason: anything else would lead to costly and time-consuming litigation on every certification application causing delay which would severely prejudice the establishment of bargaining rights purportedly guaranteed by the statute. If time is of the essence generally in labour relations, that maxim is particularly true in the construction industry. That is why the Act expressly empowers the Board to issue certificates without a hearing where it considers it advisable to do so, and, as we have already noted, the Board need not have regard for a build-up of the work force after the application is made. Technically, a union may conclude a collective agreement even though there are no employees at the time it is entered into (see section 121), although as a practical matter, if there are no employees, there may be no bargaining leverage to induce an employer to do so.

11. The present application for certification is one of a series of similar applications made in respect of the respondent's road building operations in various parts of Northern Ontario. This application was made on November 9, 1983, which, we are told, was a couple of days after the start of the hunting season in and around North Bay. The employer submits that we should take into account the importance of the hunting ethos in Northern Ontario communities, which prompts some employees to take time off at this time of the year to engage in such activity. The employer argues that those employees who were not at work because they were off hunting really be treated as employees in the bargaining unit despite the Board's established practice in that regard.

12. We do not accept the respondent's submission. Given the inherent instability, uncertainty, and ephemeral nature of employment in the construction industry, it would add yet another element of complexity and uncertainty if the parties and the Board had to take into account and weigh the multitude of possible reasons why an individual would not be at work for a particular employer on a particular day. No union or employer would ever know who should be included on the list

submitted with the employer's reply. The issue could only be resolved after an enquiry before the Board, by which time the picture would probably have changed again. Such approach would not further the orderly and expeditious processing of construction industry certification applications in which, we repeat, time is of the essence. The Board's existing practice is neutral, easy to understand and administer, and has been applied without difficulty for more than thirty years. In particular cases it may benefit a trade union or employer but, overall, we think it is a sensible and workable compromise which is much preferable to the alternatives. This is not to say that a concern for the consequences of a particular interpretation can confute the clear meaning of a statute. However, where in a particular context the statutory language does not give an unequivocal answer, it must be of real concern for the Board to consider which of the competing interpretations urged upon us is more consistent with the orderly resolution of certification applications and the promotion of rights dealt with in the Act. And, in so doing, we do not think we can overlook the fact that the Board's existing approach is of long-standing, we accepted in the labour relations community, and provides an important element of certainty for all parties, despite the volatile environment of the construction industry.

(See also, *Diplock Durable Floor Company Limited*, [1982] OLRB Rep. Aug. 1159.)

19. Subsequently, in *E & E Seegmiller Limited*, [1987] OLRB Rep. Jan. 41 and *Gilvesy Enterprises Inc.*, [1987] OLRB Rep. Feb. 220, where the Board examined its approach to construction certification applications, the Board concluded (at paragraphs 16, 17 and 21 of *Gilvesy Enterprises Inc.*, *supra*) that it is appropriate to focus even more on the certification application date in such cases:

16. In applications for certification in the construction industry, a person must be at work on the date of application in order to be included in the bargaining unit for purposes of "the count" (see for example, *Smiths Construction Company Arnprior Limited* [1984] OLRB Rep. March 521). In addition, an individual must be doing bargaining unit work in order to be included in it. In the past, the Board has determined whether an employee is in the bargaining unit by looking at the work that an employee did during the majority of the time on the date of application (see for example *O.J. Gaffney Limited*, [1964] OLRB Rep. Aug. 233; *McNamara Construction of Ontario Limited*, [1964] OLRB Rep. Dec. 419; *Nedan Forming Company Limited*, [1965] OLRB Rep. May 100; *Clairson Construction Company Limited*, [1968] OLRB Rep. Apr. 126; *Deer-Mine Services Limited*, [1971] OLRB Rep. June 336; *George and Asmussen Limited*, [1971] OLRB Rep. Oct. 683). Even when an employee was doing the work of one classification or craft on the date of application but has previously been engaged in doing the work of several trades or crafts but at the same wage rate, the Board has long been willing to examine a representative period of time prior to the date of application to ascertain what work an individual spends the majority of his time doing and whether or not he/she is properly included in the bargaining unit. (See for example, *Johnson-Keiwiit Subway Corporation*, [1966] OLRB Rep. June 182; *Mal-Nicholson Limited*, [1970] OLRB Rep. March 1448; *Health Construction Inc.*, [1977] OLRB Rep. Oct. 691; *Watcon Inc.*, [1981] OLRB Rep. Dec. 1840; *Des-Build Development Limited*, [1983] OLRB Rep. Nov. 1793; *Dufresne Piling Co. (1967) Ltd.*, [1984] OLRB Rep. July 924; *Di Marco Plumbing & Heating Company Limited*, [1985] OLRB Rep. May 659). It is evident from the decided cases that the "representative period" will vary in length according to the circumstances. For example, the Board has looked at periods of ten days (*Heath Construction Inc.*, *supra*); fifteen days (*J. M. Chartrand Realty Ltd.*, [1978] OLRB Rep. May 423), two weeks (*Di Marco Plumbing & Heating*, *supra*) and one month (*Des-Build Developments Ltd.*, *supra*). It has also be [sic] suggested that the Board may look to the primary reason for which the employee was hired to determine his classification (*Pre-Con Murray*, [1965] OLRB Rep. Jan. 1003) although his test has only been applied in limited circumstances where the evidence of what the employee was doing prior to and on the date of application was inconclusive of the issue. (See, *Des-Build Development Limited*, *supra* and *Dufresne Piling Co. (1967) Ltd.*, *supra*).

17. In summary, the previous decisions of the Board indicate that the Board has considered the following criteria in making its determinations:

- (a) whether the person was employed by the respondent and at work on the date of application; and
- (b) if so, the work that that person spent the majority of his/her time doing on the date of application; or

- (c) where the person was previously been engaged in the work of more than one trade or craft and the work performed by him/her on the application does not accurately reflect the work that he/she normally spends the majority of his/her time doing, the work done by the employee during an appropriate representative period prior to the date of application; or
- (d) where there is no conclusive evidence with respect to the work in which an employee has been engaged, any other relevant factor, including the primary reason for hire.

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21. In making our determination, we considered the work performed by the persons whose status was in dispute in these proceedings both on the date of application and during a period prior to that date. However, it appears to us that recourse to a "representative period" has made the certification process in the construction industry less consistent, certain, and expeditious than it might be. The use of any such period is inconsistent with the requirement that a person be both employed by the respondent and at work on the date of application. The very nature of a "representative period" is such that its length will vary according to the circumstances of the particular application and creates uncertainty. Looking to a "representative period" overlooks the fact that once a trade union has been certified as bargaining agent for a bargaining unit of employees of an employer in the construction industry, any collective agreement to which that employer becomes bound, whether a provincial agreement or not, will apply to persons doing the work covered by that agreement. Consequently, whether or not an employee is covered by a particular collective agreement and represented by a particular bargaining agent depends on the work that s/he is doing at the time and is in no way dependent upon the work that s/he performed during any previous period. Further, the use of a "representative period" has tended to result in protracted and expensive proceedings before the Board. Because it is important that the Board's policies and tests be consistent and create, as certain, equitable, and expeditious a means as possible for ascertaining which persons are in a bargaining unit, and having regard to the nature of applications for certification in the construction industry, we take the view that the Board should eliminate its use of a "representative period" and restrict itself to the following criteria:

- (a) whether the person was employed by the respondent and at work on the date of application; and
- (b) if so, the work that that person spent the majority of his time doing on the date of application; or
- (c) where there is no conclusive evidence with respect to the work that the employee performed on the date of application, any other relevant factor, including the primary reason for hire.

20. Those cases were decided under the *Labour Relations Act* as it was prior to both Bill 7 and Bill 40, but have been invariably and consistently followed ever since. Initially, this did not alter the Board's approach of voter eligibility in the construction industry which was described and contrasted with the Board's approach in that respect in non-construction applications in *City Plumbing (Kitchener) Limited*, [1987] OLRB Rep. June 810 as follows:

6. The Board has also long recognized that there is a difference between employment in the construction industry and non-construction employment. A major difference between the two is that employment in the construction industry tends to be intermittent and transitory relative to non-construction employment. A great deal of construction work is seasonal or subject interruption due to inclement weather. When they do work, construction employees tend to work in small crews and continuous employment with any given employer is often measured in weeks or months rather than years. In recognition of the differences between them, the Board has established a practice of approaching the two situations differently. For example, in both applications for certification and termination proceedings, the employer involved is required to file with the Board a list of employees in the bargaining unit so that the Board can, as it must, ascertain the level of employee support of the application before it. In proceedings relating to the construction industry, the Board counts only

these persons actually at work in the bargaining unit on the date of application in determining the number of employees in the bargaining unit. In contrast, in non-construction proceedings, the Board does not require an individual to be at work in the bargaining unit on the date of application for purposes of the count so long as s/he was an employee in the unit on that day, and did actually work in it on at least one day in the thirty day period prior to and one day in the thirty day period subsequent to the date of application. Similarly, when a representation vote is held in the course of proceedings involving the construction industry, a persons is entitled to vote if s/he was *at work in* the voting constituency on the date of the Board's decision directing the vote (or, where a pre-hearing vote is requested in a certification application, on the terminal date), and the day of the vote. In non-construction matters, on the other hand, an individual is entitled to vote if s/he was *employed in* the voting constituency on those two material dates. Being "at work in" the voting constituency requires an individual to be physically on the job. Being "employed in" the voting constituency does not require a person's physical presence at work so long as s/he has not been permanently removed from employment in the voting constituency. This distinction illustrates the Board's practice of focusing on specific dates in construction industry proceedings and on periods of time in non-construction matters, and it reflects the Board's attempt to accommodate the differences between the two employment situations.

7. Contrary to what counsel for the respondent suggests, so long as employment in the voting constituency is not terminated, in neither case does the Board require an individual to be at work in it for any minimum period of time, or at all, during the period between the two material dates in order to be eligible to vote. It would be impractical and unrealistic to impose any such requirement. It is to be expected that some employees will not be at work, or if at work not be performing work within the voting constituency, during some part, or all, of the period between the date of the Board decision directing the vote (or the terminal date in the case of a pre-hearing vote), and the day the vote is taken. That is particularly true in the construction industry where the vagaries of employment are such that it is possible, even likely, that imposing a requirement that an individual perform work in the voting constituency during that intervening period would, in many cases, result in there being no one entitled to cast a ballot. The *Labour Relations Act* provides employees with an opportunity to join and be represented by a trade union in their employment relations with their employer, and also permits them to terminate that trade union's right to represent them, if they see fit to do so. It would be inappropriate for the Board to adopt procedures which would effectively deny either right. Furthermore, such a requirement could create uncertainty and invite protracted litigation, neither of which is desirable in labour relations matters, particularly those relating to representation rights.

8. The purpose of the Board's practices is to ensure that the persons affected by the outcome of a vote; that is, the employees in the bargaining unit affected, have an opportunity to participate in a representation vote where one is directed. To achieve that goal, the Board has formulated different approaches to employment in the construction industry and non-construction industry employment in response to the differences between the two employment situations. Some of those differences in approach have already been discussed. They are also reflected in the difference in the meaning that the Board has ascribed to the standard language it has long used to describe voter eligibility in representation votes in the construction industry compared to that in non-construction votes. In the result, in non-construction matters, a person need not be "at work in" the voting constituency at any time so long as s/he is "employed in" it. In construction matters, the same eligibility terminology has been made equivalent to "at work in" so that a person must be at work in the voting constituency on both of the material dates; that is, the date of the Board decision ordering the vote (or the terminal date in the case of a pre-hearing vote), and the day the vote is taken in order to be eligible to vote (see *Crowle Electrical Limited*, *supra*). This reflects the Board's attempt to strike a balance between the vagaries of employment in the construction industry and the object of affording affected employees an opportunity to vote.

21. That changed with the Board's decision in *Crete Flooring Group Limited*, [1992] OLRB Rep. July 792 (also a pre-Bill 40 case), where the Board reviewed its approach as follows:

3. Ordinarily, when a pre-hearing representation vote is requested in a certification application, whether it arises in the construction industry or not, those eligible to vote will be those individuals who are considered to be employees in the voting constituency as of two different dates, both as of the terminal date and as of the date the vote is taken. (In pre-hearing applications, the appropriate

bargaining unit is not determined until after the vote is held.) In non-construction pre-hearing vote certification applications, the voter eligibility requirements are described in terms of those employees who "are employed in" the voting constituency on the terminal date and the day the vote is taken, while in construction certifications, those eligible to vote are described as those "at work in" the voting constituency as of the same two date. (See *City Plumbing (Kitchener) Limited*, [1987] OLRB Rep. June 810.)

4. Practice Note No. 9 describes voter eligibility requirements for pre-hearing representation votes. That Practice Note reads as follows:

APPLICATION FOR CERTIFICATION

PRE-HEARING REPRESENTATION VOTES

DATE FOR DETERMINING ELIGIBILITY OF VOTERS

1. Where a trade union, in applying for certification, requests a pre-hearing representation vote and the Board directs that such a vote be taken, it has been the practice of the Board, except in special circumstances, to direct that the employees in the voting constituency who are eligible to vote are those *in the employ of the employer on the terminal date* fixed for the application in accordance with Section 2 of the Board's Rules of Procedure.

2. If any party wishes to have eligibility determined as of some date other than the terminal date for the application, representations as to the reason therefor should be made to the Labour Relations Officer appointed to confer with the parties *at the time of the Labour Relations Officer's meeting*.

5. Practice Note No. 9 dates from August, 1964. It arose at a time when the Board applied similar practices to construction and non-construction certification applications. This is no longer true, and has not been the case for many years now. For that matter, the Practice Note itself does not reflect current practice, for it indicates that only one date is determinative, the terminal date, rather than the "two date" requirement.

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14. It is necessary to understand and appreciate the construction industry context in which this application arises in order to determine the appropriate voter eligibility requirements. In *Diplock Durable Floor Company Limited*, [1982] OLRB Rep. Aug. 1159, the Board had before it an application for certification in the construction industry. The Board wrote, as follows:

9. Unlike the situation in other industries, the Board's general practice in the construction industry is to count as employees of an employer only those persons actually at work for the employer on the day in question. This applies both when the Board determines who was an employee on the application date for the purposes of the "count", and also who was an employee on the date set to determine eligibility to vote in a representation vote. The Board's practice arises out of the transient nature of the work force in the construction industry as well as a resulting need for a clear set of practices regarding construction industry certification applications. Individual tradesmen frequently move from employer to employer. Further, when a tradesman is laid off, even for a short period of time, he often obtains alternate employment with another firm. In this regard, it is instructive to note that one of the individuals who worked for the respondent during most of March, namely Mr. Gomes, was included on the voters' list in the *Metro Concrete Floors Inc.* case, File No. 2657-81-R (which involved a contest between the same two unions as in this case) on the basis of his employment by that firm during part of March, including March 31, 1982, the date set to determine voter eligibility.

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11. We are not prepared to depart from the Board's practice of regarding as employees in the construction industry only those persons actually at work for an employer on the date in question. We would note that the policy is one that avoids uncertainty and lengthy

disputes concerning who should be counted as an employee. In this regard, we would adopt the reasoning of the Board in the *Keystone Contractors Limited* case [1966] OLRB Rep. Feb. 821, where in denying a request that it not dismiss a construction industry certification application due to the fact that no one was at work on the application date because of a snow storm, the Board noted that its policy respecting who it will view as a construction industry employee is basically equitable to all parties and also lends itself to the expeditious disposition of certification applications which is a primary consideration in the construction industry. In the instant case, the Board set March 16, 1982 as the date for determining voter eligibility. In that the five individuals in question did not work for the respondent on March 16, 1982, we are satisfied that on that date they were not employed within the voting constituency. Accordingly, the segregated ballots of Messrs. Iwasjuk, Gomes, Fritas, G. White and J. White are not to be counted.

22. Then, after citing the paragraphs from *City Plumbing (Kitchener) Limited, supra*, set out above, the Board went on to say that:

16. Because of the nature of the construction, in certification applications arising in the construction industry the Board takes a "snapshot" of the state of affairs on the application date of the application. Focusing solely on the employee complement on that date, the Board determines the number of employees in the bargaining unit, and the level of membership support filed by the union amongst those employees. The Board does not have regard to all the principles or rules that apply in non-construction certifications. For example, the Board does not include in the bargaining unit those who meet the requirements of the "30-30" rule. It does not apply the principles of "build-up", where the Board defers consideration of the number of employees in the bargaining unit, or defers directing a vote, until such time as the employer work force is more stabilized, regular, or representative. In this respect, section 121(2) of the Act reflects the different context and approach to construction industry applications, stipulating that the Board need not have regard to any increase in the number of employees in the bargaining unit after the application was made. The legislation specifically encodes the right of the Board in construction applications to focus solely on the application date.

17. This practice is not new. In determining whether a certificate will issue automatically, or a vote be directed, the Board, in construction applications, has long considered the wishes of only those employees at work in the bargaining unit on the application date. The Board does not consider the wishes of those employees at work the day before, the day after, or any day other than the application date, for to do so would be inconsistent with how construction works, and would more likely be less fair and less representative. In *E & E Seegmiller Limited*, [1987] OLRB Rep. January 41, the Board clarified and reemphasized the extent to which the Board looks only to the employees at work on the application date. And see *Gilvesy Enterprises Inc.*, [1987] OLRB Rep. Feb. 220. Whether the employees who were at work on the application date had ever worked for the employer before, or ever would again, it is only those employees at work on the application date whose wishes are taken into account in determining the merits of the certification application. It does not matter why a given individual might not have been at work on the application date, whether for reasons of illness, lay-off, or whatever. If that individual was not in fact at work in the bargaining unit on the application date, then his/her wishes are not taken into account in determining whether the union is entitled to automatic certification, or, if the level of membership support is not sufficient for automatic certification (or if a pre-hearing representation vote is requested), is entitled to a vote.

18. In this context, where the Board looks to the "snapshot" of the application date already, and appropriately so, it is difficult to see why the Board should apply a two-date voter eligibility rule or why it should not also look only to the application date for voter eligibility.

19. The intervener submitted that the use of two different dates, with some meaningful interval between them, will increase the likelihood that a representative group of employees will be eligible to vote, and that those who must live with the vote results will be those voting. As already noted, this is not generally true in construction matters. To take other than a single representative day to determine voter eligibility is inconsistent with the historical reality of how the construction industry operates. And it is more consistent, fair, and representative to apply a practice whereby the group of employees that gets to determine whether the union gets certified without a vote, (if enough memberships are signed and filed for automatic certification), or whether it gets certified after a

vote (where the level of support requires a vote, or where a pre-hearing vote is requested) is the same group of employees that gets to participate in any vote. Since the work force is so transitional and quickly changing, focusing on a different date or dates for purposes of voter eligibility will ordinarily result in a different group of employees getting to vote on the application than the group of employees that secured the right to the vote.

20. Picking a single date for voter eligibility would also serve to reduce the potential for gerrymandering, and reduce lengthy and expensive litigation over a number of issues, promoting certainty and finality. The potential for gerrymandering continues to exist when a date for voter eligibility has not yet arrived at the time the employer becomes aware of the application. To repeat, the work force in construction is often fluid, transitional and rapidly changing. Where the first date of voter eligibility is the terminal date, a date the employer is advised of when it receives notice of the application, the employer will be able, if it chooses, to significantly influence which employees are at work on that date, just as it can influence who is at work on the date the vote is held. We do not suggest that most employers gerrymander, only that some do and the current practice creates a significant potential for such abuse.

21. An employer's actions are subject only to the union's right to file an unfair labour practice complaint if it asserts that the employer breached the Act in its conduct in this respect (as, indeed, the Labourers' assert here). (See, for example, *P & R Concrete Finishing*, [1978] OLRB Rep. Oct. 944; *London District Crippled Children's Treatment Centre*, [1980] OLRB Rep. Apr. 461). Such an approach is not particularly satisfactory. First, this approach engenders litigation (as it has here) both over whether an unfair labour practice has been committed and over the list of eligible voters. Where a representation vote is to be held, it is important that the vote be held quickly. In regular certification applications, litigation may occur over a variety of issues with the sole purpose of delaying the vote in order to ensure that a new group of employees get to cast ballots. Prejudice caused by delay is particularly acute in the construction industry, given the constant turnover of employees and the transitional nature of the work force. The community, and the Board, have long been aware that delay in holding a vote in the construction industry will almost always be to the prejudice of an applicant union. Even when the vote is still held quickly, as here, litigation will delay the resolution of the application. Voter eligibility rules ought to reduce the potential for litigation delay, by providing greater certainty and clarity, and by reducing the potential for gerrymandering. A two date eligibility requirement, where both dates occur after notice has been provided to all parties, can only increase the likelihood of less fair representation votes. Much of the type of litigation that has been occurring in this area would likely disappear if it were clear that only those at work on the application date will be eligible to vote, if a vote should be directed. Second, events may occur subsequent to the application date which cannot be shown to be an unfair labour practice, yet influence or affect who may vote. This might not be a problem if it were otherwise appropriate to allow those who are employees on a subsequent date to vote. But the fact remains that the appropriate group of employees to determine the success or failure of the application are those who were at work in the bargaining unit on the application date.

22. We do not agree that in a displacement application, as here, use of the application date for voter eligibility provides an unfair advantage to the raiding union. The incumbent union will have represented the employees during the term of the collective agreement, and the employees will generally be members of the incumbent union. Given these facts, it is neither apparent nor likely that a union attempting to replace the incumbent as bargaining agent will be unfairly advantaged by being able to choose, within the limited open period under the Act for bringing such applications, when to file the application. The applicant will have no influence on who the employees are on the application date. It only gets to select that date, within the open period. In any event, in construction applications there is nothing new in this. The applicant already gets to choose the application date, and the Board already focuses on the employees at work that day. On occasion, this no doubt results in tactical advantages to the applicant but there is nothing untoward or unfair in this.

23. Practice Note No. 9 indicates that the terminal date will be looked at for voter eligibility. That Practice Note was formulated and became effective approximately twenty-eight years ago, and does not appear to reflect the Board's current practice. The Practice Note recognizes that there may be "special circumstances" where use of the terminal date in pre-hearing votes will not apply. In our view, the traditional approach, reflected in the Practice Note, ought not to apply in the special circumstances of the construction industry.

24. Accordingly, in pre-hearing construction applications, as here, those eligible to vote will be those at work in the voting constituency on the application date, and in regular construction applications, those eligible to vote, if a vote is directed, will be those at work in the bargaining unit on the application date.

23. The approach enunciated in *Crete Flooring Group Limited, supra*, has been consistently and invariably followed since that decision.

24. This is the first case under the *Labour Relations Act, 1995* (Bill 7), which came into effect on November 10, 1995, in which the Board's approach to voter eligibility in the construction industry has been directly challenged. Because, as the Board noted in *Crete Flooring Group Limited, supra*, this approach follows logically from the date of application tests described in *Smiths Construction Company, supra*, and subsequently in the *E & E Seegmiller, supra*, and *Gilvesy Enterprises, supra*, decisions, the Board's entire approach must be examined in order to properly deal with the employer's arguments in this case.

25. The real question is whether there have been any changes which should cause the Board to depart from its long established approach of "counting" only those employees at work in the bargaining unit on the application date in construction industry applications for certification, or from its more recent approach to voter eligibility in such cases. We think not.

26. Have there been changes in the construction industry over the past forty plus years? Of course there have. But the fundamental nature of employment in the construction industry has not changed. Construction industry employment remains fundamentally transient and ephemeral in nature. There have always been regular or long term employees (sometimes referred to as "steady Eddies") employed in the construction industry by both small and large construction employers. The number or proportion of such steady Eddies has varied over time, depending largely on the economy and availability of work generally or in a particular sector of the industry, or even with the rise or fall of the fortunes of particular employers. But even these fluctuations tend to demonstrate the fundamentally transient nature of employment in the construction industry. The "special problems" described in paragraph 9 of *Smiths Construction Company, supra*, continue to exist today.

27. What of the legislative changes? The *Labour Relations Act, 1995* has fundamentally changed the nature of the certification process in Ontario. As the Board recently explained in *Burns International Security Services Limited*, [1996] OLRB Rep. Mar./Apr. 192 (and see also the *Corporation of the City of Toronto*, Board File No. 2603-95-R, decision dated July 3, 1996, unreported), the certification scheme under every pre-Bill 7 *Labour Relations Act* was document based, with the representation vote being an essentially residual mechanism. Prior to Bill 7 there were relatively few representation votes in certification cases, particularly if one excludes cases where there was an incumbent trade union in place from the analysis. Under the *Labour Relations Act, 1995*, the certification scheme is vote based. That is, subject perhaps to applications under section 11(1), a representation vote is held in every case and a trade union will only be certified if it wins a vote. The Bill 7 certification system is designed to facilitate representation votes, and to give effect to the result of such votes. The question is: Does this effect the Board's date of application approach to voter eligibility in the construction industry?

28. The purposes of the pre-Bill 40 *Labour Relations Act* were set out in its preamble as follows:

WHEREAS it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.

In the Bill 40 Act, the purposes were incorporated in the legislation and described, in section 2.1 as follows:

2.1 The following are the purposes of this Act.

1. To ensure that workers can freely exercise the right to organize by protecting the right of employees to choose, join and be represented by a trade union of their choice and to participate in the lawful activities of the trade union.
2. To encourage the process of collective bargaining so as to enhance,
 - i. the ability of employees to negotiate terms and conditions of employment with their employer.
 - ii. the extension of co-operative approaches between employers and trade unions in adapting to changes in the economy, developing work force skills and promoting workplace productivity, and
 - iii. increased employee participation in the workplace.
3. To promote harmonious labour relations, industrial stability and the ongoing settlement of differences between employers and trade unions.
4. To provide for effective, fair and expeditious methods of dispute resolution.

In section 2 of the *Labour Relations Act, 1995*, the following are set out as its purposes:

2.The following are the purposes of the Act:

1. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees.
2. To recognize the importance of workplace parties adapting to change.
3. To promote flexibility, productivity and employee involvement in the workplace.
4. To encourage communication between employers and employees in the workplace.
5. To recognize the importance of economic growth as the foundation for mutually beneficial relations amongst employers, employees and trade unions.
6. To encourage co-operative participation of employers and trade unions in resolving workplace issues.
7. To promote the expeditious resolution of workplace disputes.

29. Throughout the evolution of the express purposes of the primary labour relations legislation of this province, the fundamental purpose has remained constant: to facilitate free collective bargaining between employers and trade unions, the latter as the freely designated representatives of employees. A review of the purposes of the *Labour Relations Act, 1995* does very little to further the analysis of the issue raised in this case. "Freely-designated" merely means free of threats, intimidation or coercion, and "of the employees" suggest no particular answer since it begs the question of "who is to be considered an employee for purposes of a representation vote in an application for certification in the construction industry?", or, in section 8(2) (of the *Labour Relations Act, 1995*) terms: "who are the individuals in the voting constituency?"

30. The Legislature must be taken to have been aware of the Board's approaches and practices under the pre-Bill 7 legislation, including the Board's approach in issue herein, when it passed the *Labour Relations Act, 1995*. Yet there is nothing in the present Act which suggests that the Board should

alter its approach to voter eligibility in construction industry applications for certification. Other than requiring that there be a representation vote “in every case” and the provisions relating to this requirement, the *Labour Relations Act, 1995* contains no substantive changes to the construction industry provisions. In that respect, it is significant that now as under the Bill 40 Act and the pre-Bill 40 Act before that, the Board need not have regard to an increase in the number of employees in the bargaining unit after a construction industry application for certification is made in dealing with such an application.

31. This is not the first case in which it has been argued that the Board’s “date of application” approach to construction industry applications for certification is “unfair”, generally an argument made by employers resisting an application for certification. *Smiths Construction, supra*, was one such case. *Al Gordon Electric Limited*, [1990] OLRB Rep. June 637 was another. In that case, the trade union (coincidentally another Local of the IBEW) filed an application for certification by mail registered on a Sunday (in accordance with the then practice and procedures in that respect). The Board outlined the employer’s position in that case as follows:

9. Counsel for the respondent submitted that the only difference in the *Labour Relations Act* between construction and non-construction applications for certification is that the Board need not, pursuant to section 119(2), have regard to any increase in the number of employees in the bargaining unit after the application was made for the purposes of its considerations under section 7 of the Act. Counsel questions the jurisdiction of the Board to apply different standards to construction and non-construction applications for certification except with respect to the matter addressed by section 119(2). Supported by counsel for the objectors, he argues that it would be a travesty, and contrary to the representation principle which underlies the *Labour Relations Act* for the Board to restrict itself to the date of application for purposes of making the necessary section 7 determinations in the circumstances of this application. He referred the Board to *Industrial-Mine Installations Limited*, [1968] OLRB Rep. May 217; *J.G. Fitzpatrick Construction Ltd.*, [1972] OLRB Rep. May 485, and *Colibri Construction Inc.*, [1986] OLRB Rep. July 931. Counsel suggested that the Board would be improperly fettering its discretion if it followed its general practice in construction applications without regard to the circumstances of this case.

Then, after citing *Smiths Construction Company, supra*, and *Gilvesy Enterprises, supra*, among others, the Board wrote that:

15. Section 102(13) of the Act specifies that the Board is the master of its own practices and procedures, though of course this is subject to the specifics of any applicable legislation and the requirements of natural justice and fairness. As illustrated above, the Board has developed a number of practices (or policies or “rules of thumb”) which it uses in certification proceedings. These have been developed over time with a view to decreasing repetitious or fruitless, but often lengthy and expensive litigation before the Board. In fashioning these practices in certification proceedings, the Board strives to create as certain, fair, and expeditious a means as possible for making the determinations necessary in such matters. Through its practices, the Board tries to be responsive to the real world of labour relations. There will of course be limits or exceptions to every practice. Indeed, blind adherence to a practice or policy set in advance may constitute jurisdictional error (see, for example, *Re: Testa and Worker’s Compensation Board of British Columbia*, (1989) 58 D.L.R. 676 (B.C. Court of Appeal) at pages 685 to 687). On the other hand, it would do nothing to further harmonious labour relations in this province to abandon practices which have evolved over and stood the test of time in thousands of applications for certification without some compelling reason(s) to do so. On the contrary, to approach them differently would make them less than practices and would create undesirable uncertainty. It would also tend to encourage unnecessary litigation and involve the Board in the fruitless exercise of constantly reinventing the labour relations wheel. In short, there is a balance to be struck. Although the Board should not abandon tried and true practices, it must be willing to examine their applicability in the circumstances of particular cases.

16. *Colibri Construction Inc.*, *supra*, was a construction industry application for certification in which the Board demonstrated its willingness to consider the applicability of its general practices of not taking into account an expected increase in the number of employees and of focusing on the

date of application for the purposes of ascertaining the number of employees in the bargaining unit, although it declined to depart from those practices in the circumstances of that case.

17. *J. G. Fitzpatrick Construction Ltd.*, *supra*, was also a "build up" case. There the Board found it appropriate to consider the increase in the number of employees in the bargaining unit after the application for certification had been made (as it had the discretion to do under what is now section 119(2) of the Act) and, in the circumstances, exercised its discretion, under what is now section 7(2), to order a representation vote notwithstanding that the applicant had filed membership evidence with respect to all four employees in the bargaining unit on the date of application.

18. In *Industrial-Mine Installations Limited*, *supra*, the applicant filed membership evidence with respect to twenty-one of the respondent's twenty-four employees who were performing bargaining unit work on the date of application. However the Board considered the fact that those twenty-four employees had been hired on a temporary basis to fill in for the respondent's regular work force of over forty employees who were not at work because of a regularly scheduled Christmas shut down. In those circumstances, the Board (by majority of decision) concluded that:

9. This last class of case has given us some concern in the present situation. After much anxious consideration, however, we have come to the conclusion that in the present case we ought to take into account the peculiar circumstances which here obtain, namely, the existence of a reasonably permanent (for the construction industry) work force, together with the shut-down, the reasons therefor and the fact that it is an occurrence which happens yearly with this particular respondent. *In other words, the representation principle must in this case take precedence over the short-term employment features of the construction industry.* Viewed in another way, if this is to be regarded as a case involving build-up, then, in our opinion, the peculiar circumstances of this case make it one in which regard should be had to an increase in the number of employees in the bargaining unit after the application was made. It may well be that the construction industry division will have to review its policy of dismissing applications in circumstances where, because of the weather or some other unusual occurrence, there are no employees in the bargaining unit on the date of the making of the application.

10. In reaching the above conclusions, we have not overlooked the argument that our decision might introduce a certain element of doubt in an otherwise straight-forward policy and that this in turn may on occasion lead to delay in the disposition of some applications for certification in the construction industry. In our view, however, such considerations must give way in a proper case such as the present where, because of the peculiar and unique circumstances, an inflexible application of a policy would produce an obviously inequitable result.

(emphasis added)

19. In neither *J. G. Fitzpatrick Construction Ltd.*, *supra*, nor *Industrial-Mine Installations Inc.*, *supra*, did the Board depart from its practice of focusing on the date of application for the purposes of making the determinations under what is now section 7 of the Act. While this does not mean that it would never be appropriate to do so, it does demonstrate that the Board's response in cases in which it is satisfied that the circumstances are such that a strict application of the date of application "rule of thumb" would lead to an inequitable result will generally, and quite appropriately in our view, be to direct the taking of a representation vote even if the applicant trade union has filed evidence of membership with respect to more than fifty-five per cent of the persons who were employees in the bargaining unit on that date.

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21. We are not persuaded that the Board should depart from its practice of focusing on the date of application for the purposes of ascertaining the number and identity of employees in the bargaining unit in the circumstances of this application. Because the applicant has not filed membership evidence with respect to more than fifty-five per cent of the employees in the bargaining unit at the time the application was made (for those purposes we assume that schedule A to the agreement of the parties referenced in paragraph 8 above is an accurate list of employees in that respect), the applicant would at best, in the absence of its request for relief under section 8 of the Act, be entitled

to a representation vote. In all the circumstances, particularly the applicant's allegations that the respondent has contravened the Act in a manner such that the true wishes of the employees cannot be ascertained and that it should therefore be certified pursuant to section 8, we find it inappropriate to either comment on or make any determination with respect to whether or not a vote should be taken until we have had the benefit of the evidence and representations of the parties with respect to all matters in issue in the application.

32. Does certainty and an expeditious determination of an application for certification take precedents over fairness? No, but fairness is not an absolute concept. Nor is it a concept which applies to some parties and not to others. What is "fair" depends upon the interplay of all of the interests involved. What is "fair" depends on the circumstances, and factors of certainty, expeditious resolution and the other concerns in *Crete Flooring, supra*, are properly taken into account in determining whether an approach like the one in issue in this case is "fair". It has always been up to the trade union to decide whether and when it will make an application for certification. Subject to specific legislative parameters (and there are none for certification proceedings where there is no incumbent trade union and no bar applies), it is always up to an applicant to decide when it will apply, in any kind of case. While it is true that an applicant trade union can try to wait for an application which is advantageous to it, there are limits on its ability to do so. For example, delay in an organizing campaign generally works the detriment of the trade union, and experience suggests that the longer a trade union waits, and in a vote based system the longer a vote is delayed, the more difficult it will be for the trade union to gain or even retain support. Further, it is always the employer which controls and directs its work force, and trade unions are as susceptible to the vagaries of construction industry employment as everyone else. Further, to throw open voter eligibility would clearly cut both ways. After all, why couldn't the trade union argue that someone (who it thought would support it) has a "connection" with the workplace such that s/he should be entitled to vote notwithstanding that s/he was not at work on the date of application.

33. It is clear that there must be some "rules" for voter eligibility. That is the case for every vote or election, be it municipal, provincial, federal, a vote in a club, or a vote in a corporation (whether privately or publicly held) etc. It will always be necessary to draw a line between those who can vote and those who cannot. Sometimes it is easy to do so, and sometimes it is not. Wherever the line is drawn, there will be cases which are close to it and which will appear to create an unfairness to those who fall just on the wrong side. Under the Board's interpretation of the Act there will be cases, arguably including this one, where it may appear to be unfair to allow an approach which disfranchises someone who it appears may have a connection with the workplace. But in the construction industry it can be difficult to discern either that there is such a connection, or whether it is real.

34. It is true that in some of the pre-*Crete Flooring, supra*, cases, including *Al Gordon Electric, supra*, the Board seemed to take comfort in the fact that there would have to be a representation vote taken (in the absence of extraordinary relief under the equivalent of what is now section 11(1) of the Act) in the case, something which is now mandatory. However, even under the voter eligibility approach prior to *Crete Flooring, supra*, persons not at work on the date of application would not have been entitled to cast ballots in such a vote; that is, the wishes of persons not at work on the date of application would not have been considered in such a vote even then.

35. In the result, the practical and legal concerns and considerations remain the same now as before, and apply equally to a vote based system where representation votes are generally held relatively quickly. (In that respect we observe the *Crete Flooring, supra*, was a construction industry application for certification in which a pre-hearing vote was requested and held quickly.) Accordingly, the analysis in that decision, with which we respectfully agree, is equally applicable generally under the *Labour Relations Act, 1995*, and specifically in this case. The Board found it neither necessary nor appropriate to depart from its tried and true approach and therefor ruled as aforesaid.

IV The Bruce Dare Status Issue

36. The Board then heard the evidence and representations of the parties with respect to the issue of Bruce Dare's status, the question being whether Dare was an employee of the employer on the date of application.

37. The employer called two witnesses, Ken Anderson, the owner and principal of the company, and his wife, Pam Anderson, who is the company's office manager. The applicant called Bruce Dare and Jim Dick as witnesses. Dare and Dick are friends who have known each other for many years, and it was Dick who alerted Dare to the possibility of employment with the employer and recommended him to Ken Anderson.

38. It is not unusual to have discrepancies or inconsistencies in the evidence of witnesses who testified before the Board. What is unusual about this case is the number and extent of the inconsistencies on material points between the evidence of Ken and Pam Anderson on one hand, and Bruce Dare on the other. The evidence of Jim Dick was both consistent and inconsistent with both the evidence of Ken and Pam Anderson on one hand, and that of Dare on the other. Further, none of these witnesses could be said to be completely neutral or disinterested. Not only are Ken and Pam Anderson married, but their opposition to the trade union was manifest. On the other hand, in Board File No. 1001-96-U Dick complained of the treatment he received from the employer after the application for certification was made. Similarly, Dare complained that he had not been paid for work he had performed and it was his status which was in issue. It is in this context and against the documentary evidence before the Board, namely telephone records, which the Board must assess the evidence.

39. The following basic facts are uncontested. The employer is one of three electrical contractors in Red Lake, Ontario, which is a community in north-western Ontario close to the Manitoba border. It is the only electrical contractor with employees, the other two being "one man shows". The company has been in business for approximately eleven years in the ICI and residential sectors of the construction industry. It competes with contractors in Kenora and Dryden but its main competitors operate out of Manitoba. At the time the application was made, on May 17, 1996, the employer had two active jobs, one at the Red Lake town office and one at the Madsen Public School in Red Lake. Not counting Dare, the company had eight employees (Jim Dick, Kelly Smith, Gary Gazankas, Kenneth Forsyth, Jeff Neufeld, John Bouchie, Harry Delorme and Wade Kolmel) at the time, of whom only Dick and Gazankas were actually at work that day. Dick and Smith were relatively new employees. Gazankas and Forsyth had been employed by the company for "a significant time", Neufeld and Bouchie have been employed by it off and on when work was available, and Kolmel as a student who has worked with the company for two years. Smith has since left, and the company now has two more employees (Robert Marselai (?) and someone named Peter).

40. Pam Anderson testified first. Her evidence is quite brief. She testified that Dare called the Anderson home sometime during the morning of Sunday, May 12, 1996 and told her that he was coming to Red Lake for an interview but had some loose ends to tie up and wouldn't arrive until Tuesday, May 14, 1996. She says she told Dare that he was supposed to be in Red Lake on Monday, May 13, 1996 for an interview and was to start work on Tuesday, May 14, 1996 if he was hired. Pam Anderson testified that Dare's response was that he would try to hurry. She also says that she was present in the company's office on Tuesday, May 21, 1996 when Ken Anderson interviewed Dare, hired him and reviewed the company's practices and policies with him, and when Dare signed a TD-1 Employment form.

41. Ken Anderson testified that he is the only one at the company who has the power to hire or fire, and that he assigns and directs all of the work (although he clearly does not attend to every on the job detail in that respect). He describes what he says is his invariable hiring process as follows. When

the company requires an additional employee, he approaches the local Canada Employment Centre. If the Centre is unable to refer anyone it will place advertisements in newspapers for him. In the alternative, he will review his file of resumes, some of which are sent to him unsolicited. Mr. Anderson said that he likes to get resumes and that he likes to interview applicants for employment in person before he actually hires them so that he can check the persons qualifications and license, and also observe him (or presumably her) to make sure that the applicant is someone who would be an appropriate representative of the company and the community. Consequently, said Mr. Anderson, he discourages telephone interviews. In that respect, he cited the example of a prospective employee from Thunder Bay who appeared to be suitable on the basis of his resume and a telephone conversation with him, but who presented poorly in person and came to his job interview with alcohol on his breath. Based on these things, which Mr. Anderson pointed out he could not have known from a telephone interview, Mr. Anderson decided that this person would not be a suitable employee, declined to hire him, and sent him home after giving him some money for his travel expenses.

42. Ken Anderson testified that he received a resume from Jim Dick in November 1995 but that he simply filed it at the time. However, in April 1996, the company needed a working foreman for the Madsen Public School Job, and after reviewing the resumes he had on file he called Dick in for an interview and subsequently hired him for that job because he was qualified and successful in the interview. In that respect, Anderson said that he picked up Dick at the Vermillion Bay bus station on Easter Sunday, they had a "good talk" during the drive to Red Lake. Anderson said that had Dick not appeared to be suitable he would have given him some expense money, thanked him for coming and said "sorry to put you out".

43. Mr. Anderson testified that Dick came to him in late April 1996, and said he needed another electrician on the Madsen School job and recommended Dare to fill that job. Anderson said he told Dick the company didn't need more electricians on that job. Although he denied asking Dick to tell Dare to send in his resume, Dare did in fact do so, by fax sent to Dick's attention, a day or three later. Ken Anderson said he filed this in his resume file. He denies calling Dare at that time but said that Dare called him, and that they had a brief discussion about Dare's resume, and he told Dare he had no work for him.

44. Anderson testified that a few days later, Placer Dome called with an industrial job for two electricians at its nearby mine. He considers Placer Dome to be an important customer and says this was an important job to him. Anderson thinks this call was on one of May 8, 9 or 10, 1996 and that on Friday, May 10, which was as soon as he could, he called Dare to verify his industrial experience, and asked him to come for an interview on Monday, May 13, with the view to having him start work on Tuesday, May 14, 1996, and that he hoped to have work for Dare "for the summer". Anderson denies telling Dare in their conversation that he was "hired" or that Dare was to talk to Dick if he (Anderson) was there when Dare arrived.

45. Ken Anderson says that Pam Anderson told him, he thinks on Sunday, May 11, 1996, that Dare had called to say that he couldn't be there until mid-Tuesday. He says that he expected Dare to be there by noon, May 14, 1996. Anderson testified that as a result of this, he called Placer Dome to ask if he could hold off on the mine job for a few days and was told that the job could start the following Tuesday, May 21, 1996. Ken Anderson says he tried to call Dare to tell him that the job had been bumped back but was unable to reach him and assumed that Dare was on his way. He denies that he spoke to Dare again until Tuesday, May 21, 1996.

46. On Wednesday afternoon (May 15, 1996), Ken and Pam Anderson left for a brief vacation in Las Vegas. Ken Anderson says that Dare had not arrived and had not called before they left. He

testified that he thought Dare was a “no show”, something which he says is not uncommon because of the location of Red Lake.

47. Anderson says that on May 14, 1996, he took Dick to the Placer Dome mine to introduce him to the electrical superintendent and that he told Dick that he might have to work there. Gazankas was the other employee scheduled to work on the Placer Dome job. He says that Placer Dome has a three hour orientation session for everyone who will work at the mine and that Dick and Gazankas were to have their session on Friday, May 17, 1996. Ken Anderson testified that he never saw Dick on May 15, 1996 and he never spoke to him before he left for his vacation, either about Dare or otherwise. He says he left Gazankas to “take care of the customers” and “run the show” but that no one was left with any authority to hire anyone, including Dare. He says that Dick and Gazankas were to be at the Placer Dome job starting on May 21, 1996, and he didn’t need any more electricians on the school job because they were ahead of the other trades.

48. Ken Anderson says that he returned from vacation on Monday, May 20, 1996, and that when he was unsuccessful in contacting Gazankas he sought out Dick, who told him that he (Dick) had put Dare to work at the school job site and had taken him to the Placer Dome orientation on May 17, 1996. Ken Anderson testified that he was surprised at this but that he was tired and said he would deal with that the next day.

49. Anderson says that the next day, Tuesday, May 21, 1996, he located Dare at the school job site, asked him to wait while he viewed the site and then took Dare back to the company’s offices for an interview, to see his license and to find out from Dare why he was late and why he hadn’t called.

50. Apparently, Anderson was satisfied with Dare and his explanation because he testified that he then “hired” Dare and had him complete the requisite TD-1 form. He also says that he told Dare that he would not pay him for the work he had performed on Thursday, Friday, Saturday and Monday because he was not an employee of the company when he did it. Anderson denies offering to pay Dare for that work as a subcontractor.

51. Anderson testified that during this discussion Dare began to apologize for the union activity and said that he didn’t want to have anything to do with it but was pressured by Dick and Gary Hogan (a representative of the applicant) to do so. He says that Dare said that he could understand why the company couldn’t pay him and that he (Dare) didn’t intend to work until Tuesday, May 21, 1996 but was pressured by Dick and Hogan (a representative of the applicant) to do so.

52. Anderson says that Dare then returned to the job site for the rest of Tuesday, but that on Wednesday, May 22, 1996 Dare told him that he had to return to Quebec because his girlfriend’s mother had become ill. Ken Anderson says that he gave Dare \$290.00 for travel expenses.

53. Jim Dick testified that he had sent his resume to the company in response to a newspaper ad in a Winnipeg newspaper. He says that Ken Anderson telephoned him in early April 1996, that he asked about his work experience and particularly whether he had worked in a school before and whether he had had any supervisory experience, and whether he was interested in coming to work. Dick says that he told Anderson that he had some personal things to take care of and he would get back to Anderson, but, he says, Anderson called him back first. Dick believes he was offered a job in his first conversation with Ken Anderson.

54. In any case, Dick agreed to go to Red Lake but he was travelling by bus and because of the Easter weekend he couldn’t get to Red Lake until “a day late”. He says Ken Anderson offered to and did pick him up the Vermillion Bay bus station and drove him to Red Lake. Dick denies that Ken

Anderson said anything about an interview in Red Lake and says he would not have gone all that way just for an interview.

55. Dick testified that he told Ken Anderson that he needed another electrician at the school job site and that he recommended Dare. He agrees that Anderson told him he didn't feel he needed another electrician but says that Anderson told him to have Dare send him his resume. He says he called Dare and told Dare to do so.

56. Dick said he learned of the Placer Dome job during the week of May 7 to 10. At first, he says that on May 10, 1996 he found out Dare was coming but then he testified that, notwithstanding a discussion he says he had with Anderson about the job, that he couldn't really say for sure when he learned Dare was coming. But Dick does say that at some point he came to expect Dare on Tuesday, Wednesday or Thursday, he was uncertain on this point, and that he understands that Dare was to work on the Placer Dome job. Dick says he went to Placer Dome with Ken Anderson on Monday, May 13, 1996, the day he understood the work was to begin, but that they were told by Placer Dome that it was not ready to proceed with the work and that the job could start the following week.

57. Dick says he spoke with Anderson by telephone on Wednesday, May 15, before Anderson left on vacation and that Ken Anderson told him to put Dare to work at the school job site when he arrived. Dick absolutely denies that he could or would put someone to work without Ken Anderson's authorization. Dick confirmed that he met with Ken Anderson on Monday, May 20, 1996 and that he told Anderson about everything that had occurred while Anderson was away, including that Dare had been working at the school job. Dick testified that this appeared to be all right with Anderson.

58. Bruce Dare's home is in Quebec, some 75 kms east of Ottawa, and some 2,000 kms from Red Lake. He testified that Dick telephoned him in early April and told him there might be work for him in Red Lake. Dare faxed his resume to Red Lake to Dick's attention. He says he understood Ken Anderson asked Dick to tell him to send in his resume. Although he concedes it as possible that he called Anderson, Dare says that he thinks Anderson called him several weeks later, on Friday, April 26, 1996 and that they discussed Dare's resume and experience. Dare says that Anderson asked him to come to Red Lake for Monday (April 29, 1996) but that he couldn't because he was involved in a real estate transaction with respect to his matrimonial home. He says that Ken Anderson accepted that and indicated that maybe something else would turn up later. Dare testified that he felt this approximately ten minute long conversation was an interview. However, it is clear that he did not think that he had a job with the company at that point.

59. Dare says that on Friday, May 10, 1996 at approximately 5:00 to 6:00 p.m., Ken Anderson called him again, asked him some questions about his resume and specifically his industrial experience, asked him if he would like to work in Red Lake, and told Dare about the Madsen School and Placer Dome mine jobs. Dare agreed to go to Red Lake. He says he understood that he had been hired to work at the mine job although he would spend the first day or two at the school job and start at the mine on Friday, May 17 or on May 21, 1996. Dare testified that Ken Anderson wanted him there by Monday, May 13, 1996 but that he told Anderson he didn't think he could get there on such short notice and would call him on Saturday, May 11, 1996 to confirm whether he could get there by May 13. Dare denies that Ken Anderson said anything about having an interview when he (Dare) arrived from Red Lake, and says that he would not take the time or incur the expense to drive over 2,000 kms for an interview.

60. Dare testified that he called Anderson at home at approximately 9:00 or 10:00 a.m. on Saturday, May 11, 1996 and spoke to Pam Anderson. He says he told her that he was coming but that the truck he would be driving (his girlfriend's) needed work, and he expected to be able to leave Monday morning to arrive in Red Lake on Wednesday. He says he asked Pam Anderson to have Ken

Anderson call him but that when he didn't hear from Ken Anderson, he telephoned Anderson at home at approximately 6:00 p.m. that evening. Dare testified that Anderson said that he would like to meet him before Dare started work but if they didn't meet that Dare should contact Dick.

61. Dare says that because the truck repairs took longer than expected, he did not leave for Red Lake until 6:00 or 7:00 p.m. on Monday, May 13, 1996. He arrived in Red Lake at approximately 4:30 p.m. on Wednesday, May 15, 1996. In all, the trip took some forty-five hours, approximately 28 hours of which were spent actually driving.

62. Dare says he made contact with Dick and worked at the school job site on each of Thursday, May 16, Saturday, May 18 and Monday, May 20. He says he also worked ten hours on Friday, May 17 (the date of application) divided between an orientation session at the mine and the school job site. Dare testified that he expected to begin work at the mine job on Tuesday, May 21. However, on May 21, he met Ken at the school site, and went with him to the company's office to have coffee and donuts with Ken and Pam and to sign a TD-1 form. He says Ken seemed neither surprised to see him nor unhappy that he was there, but he says that Ken suggested that he pay Dare as a subcontractor for the hours he had worked prior to May 21, an offer which Dare says he declined. Dare denies that Anderson told him he would not pay him for the work he performed prior to May 21 and says that he would have left right away if that had been the case because he would not work if he was not going to be paid.

63. As it turned out, Dare left the following day anyway. He testified that his girlfriend, who had travelled with him to Red Lake, received word that her mother was ill and that she wanted to return to Quebec to be with her. Dare agrees that this is what he told Ken Anderson and that he met with Anderson at the latter's request and that Ken gave him \$290.00 for travelling expenses. Dare denies apologizing for the union's presence, or that he said that he had been pressured to start working or at all. However, Dare says that Anderson questioned him about who was involved in the application.

64. Finally, Dare testified that although he and Anderson discussed wages and hours of work over the telephone, he didn't think that hours could be banked. He also says that when he left Red Lake to accompany his girlfriend to her mother's side, he intended to return to Red Lake when everything was cleared up.

65. Together with various telephone records, that is the evidence before the Board and forms the basis upon which the Board must determine whether Bruce Dare was an employee of the responding employer on the day this application was made. The Board did not hear evidence from any other employee, from anyone connected with Placer Dome, or from Dare's girlfriend, for example.

66. The issue then is whether Bruce Dare was an employee on May 17, 1996. In this case, the question is: was Bruce Dare hired by the employer prior to May 17, 1996? In assessing the evidence and determining what is more probably than not the answer to that question, the Board must weigh the evidence having regard to the apparent interests of the witnesses who testified. Further, while considering what was reasonable in the circumstances, we are obliged to remind ourselves both that peoples recollections may differ according to their perceptions, and that people do not always act in a manner which, particularly when viewed in hindsight, appears to be reasonable or rational.

67. It is apparent that Jim Dick, a long time friend of Dare, actively and persistently sought to obtain employment with the company for Dare. While it is possible that Anderson asked Dick to have Dare send in his resume, one wonders why Dare faxed his resume to Dick's attention if that was the case, particularly since there is no dispute that only Anderson has the power to hire employees. It seems more likely that this was Dick's suggestion and that Dick planned to use Dare's resume to continue to promote Dare with Anderson. There is no support for Dare's evidence that Anderson telephoned him in late April 1996. The telephone records show no such call from either the Anderson's home telephone or

from the company's business telephone, and there is nothing which suggests that the company needed another electrician at the time. It seems far more likely that Dare telephoned Anderson, to follow up on what appeared to him was a reasonable prospect of work.

68. In any case, it is common ground that Anderson did telephone Dare on Friday, May 10, 1996. The telephone records indicate that this call lasted approximately six and a half minutes. Anderson and Dare agree on the essence of the conversation; that is, that they briefly discussed Dare's resume and industrial experience, the work available, and whether Dare was interested in coming to Red Lake to work. Where they differ is on what this conversation meant to each of them. From Anderson's perspective, he was following his standard procedure and while Dare looked good on paper and sounded fine on the phone he would not commit to hiring him until he interviewed him in person. From Dare's perspective, he felt he had gone through an interview, and Red Lake was a long way to go for an interview without the commitment of a job. Unfortunately, neither one said any of this to the other. Instead, each made assumptions based on his own practice or experience. If this was all the evidence, the Board could reasonably conclude that there was a simple misunderstanding between them. Since there must be a common intention to create an employment relationship before a person can be found to be an employee of an employer, there was none at this point, and Dare was not yet an employee. However, this is not the end of the story.

69. The recollections of the Ken and Pam Anderson with respect to what happened next are clearly wrong. The telephone records corroborate Dare's assertion that he telephone the Andersons twice on Saturday, May 11, 1996, once in the morning and once in the afternoon. The records indicate these telephone calls were relatively short. Ken Anderson's evidence and subsequent conduct suggest that Dare's version of what was said in these telephone conversations was more probably than not correct. Anderson said that he expected Dare by noon on Tuesday, May 14, 1996, yet he says that he telephoned Placer Dome early Monday morning to see if work on the mine job could be delayed because Dare was going to be late, something which would have been unnecessary if he really expected Dare by noon on Tuesday. Anderson said that the work was rescheduled for the following week, but the company's telephone records do not corroborate his evidence that he attempted to call Dare in that respect (the evidence also being that Dare has an answering machine on that telephone line), even though it is apparent that it was the mine job which he had in mind for Dare and so far as he knew Dare might not have left yet. In that respect, we accept Anderson's evidence that the Placer Dome job was originally to start on Tuesday, May 14, 1996, and that Dick was mistaken when he said he thought it was to start on May 13, 1996. In addition, Dick's evidence was that the mine job was delayed at Placer Dome's request but it is as likely as not that that was his perception of events at the mine on May 14, 1996, which he misunderstood because he was unaware of the prior conversations between Anderson and Placer Dome.

70. There is simply no support for Dare's suggestion that the Placer Dome job was originally to start on May 17 or May 21. His assertion that Anderson wanted him there as soon as possible and before he started on the mine job is consistent with the evidence that that job was to start on May 14, 1996, and is inconsistent with the evidence, which is uncontradicted, that there was no actual or perceived need for an extra electrician on the school job.

71. However, it is also apparent that notwithstanding his assertion that he considered Dare to be a "no show" by Wednesday, May 15, 1996, Anderson was still expecting Dare to appear. That is why he asked Placer Dome to delay the job, and this expectation is consistent with the two May 11, 1996 conversations and with Anderson advising Dick only that he *might* have to work at the mine job, which Dick subsequently did.

72. This brings us to the crucial point on May 15, 1996. The Board does not accept Anderson's denial that he did not speak to Dick that Wednesday before he left for Las Vegas. First, he was still expecting Dare. Even if he had begun to think that Dare might not appear it was at least equally possible that he would, having regard to the telephone discussions during the preceding weekend and the distance Dare had to travel. Second, he was going to be gone for some five days and on his own evidence he directs and assigns all the work. It is difficult to believe that Anderson would not have checked on the school job site before he left and that he would not make some provision for the Placer Dome mine job (an important job for which the orientation had been re-scheduled for Friday, May 17 while he was away, with work to begin on May 21, the day after his scheduled return) if Dare did arrive on one hand and if Dare didn't arrive on the other.

73. Accordingly, we accept Dick's evidence in that respect, and we also accept that Anderson told Dick to put Dare to work on the school job if he arrived. This is consistent with Anderson being the only one with the power to hire and with Dick's evidence that he wouldn't have put Dare to work without being instructed to do so. This is also consistent with Anderson's general approach to hiring in that Dare would be hired subject to Anderson satisfying himself upon his return from Las Vegas that Dare was as suitable as his resume and telephone conversation made him appear to be. That is, from Anderson's perspective, he could always terminate the relationship when he returned if he didn't like the look of Dare, but in the mean time his jobs, including the Placer Dome job which he considered to be an important one, would be covered. It is also consistent with what happened on Tuesday, May 21, 1996 when the confirmatory interview took place and the TD-1 form was completed.

74. The Board does not accept that Anderson said the employer would not pay Dare for the some forty hours of work he had done. This would be inconsistent with the fair and reasonable approach he otherwise took in dealing with employees or prospective employees, and it is inconceivable that Dare would have accepted this as meekly as Anderson says he did. After all, Dare did perform work that the responding party employer received the benefit of. It is far more probable than not that Anderson did offer to pay Dare as a subcontractor for that work. Although we need not speculate why he would want to do so, it is not inconceivable that this application had something to do with it if he thought that would mean Dare was not an "employee" at the time. We note that Dare never did go to work at the mine but it is likely as not that Anderson simply decided to leave things as they were with Dare at the school and Gazankas and Dick at the mine.

75. We find nothing in the evidence of Dare's lack of knowledge regarding banking hours, the reasons why he came to or left Red Lake or whether he intended to return other to vote or in the conversations between Anderson and Dare just before Dare left Red Lake to have any bearing on the Board's consideration of the question of whether Dare was an employee of the company on May 17, 1996. On the evidence before the Board, we are satisfied that Anderson delegated the authority to hire Dare if he arrived to Dick, and that Dick hired Dare as an employee of the company effective May 16, 1996. That is consistent with Anderson's reaction to the information he received from Dick on May 20, and with his conduct on May 21. Accordingly, on the evidence before the Board, we are satisfied that Bruce Dare was an employee in the bargaining unit on May 17, 1996, the application date herein, and that as such he was entitled to vote.

76. In the result, the following three persons were entitled to cast ballots in the representation vote taken in this application:

Jim Dick
Gary Gazankas
Bruce Dare

77. The Registrar is directed to have the ballots cast in the representation vote counted in accordance with this decision.

DECISION OF BOARD MEMBER F.B. REAUME; September 18, 1996

1. I must respectfully dissent with the majority decisions with respect to the voter eligibility question and the Bruce Dare Status Issue.

I. Voter Eligibility

2. In the instant case, there is evidence to show that the four individuals, who took the application date off in lieu of overtime, were clearly known by all parties involved as to their connection with the workplace. Thus in their case there is no difficulty in discerning their employment connection.

3. The union clearly took advantage of these scheduled time off's in lieu to file for certification in order to disenfranchise these four knowingly connected employees.

4. To deny the four the opportunity to vote on their employment future is a denial of natural justice in these mutually acknowledged circumstances. No one knows for certainty how any of them may have voted, but they will have to wait for over a year before they will have an opportunity to show how they feel about being union members should the vote as being conducted result in the union getting bargaining rights for their employer.

5. The real question is what is more important, - (1) to carve in stone the Board's practice of recognizing only those employees in the bargaining unit who are at work on the application date or - (2) the natural justice of the majority of longer standing employees who would be disenfranchised by the said Board practice.

6. In light of the uncontested facts in this case I must cast my opinion in favour of the four disenfranchised employees who are being denied natural justice and dissent from the majority decision.

II. The Bruce Dare Status Issue

7. The evidence regarding the acquisition of Bruce Dare is not surprisingly contradictory. The key issue is whether or not Mr. Anderson authorized Jim Dick, the organizer to hire Dare in his absence, without benefit of a face to face discussion with Dare. In my considered opinion, there is nothing credible in the evidence that confirms that Anderson did authorize Dick to put Dare to work at the school job in his absence. There is evidence which supports that Anderson would not have authorized it.

8. Both Dick and Dare may have sincerely believed that they were hired before leaving for Red Lake but the evidence shows that Anderson's experience with the outside applicant, who looked good on paper and over the phone but showed a drinking problem face to face, would underline his practice not to hire without a face to face meeting.

9. Anderson's evidence was that no employee had been hired without a face to face meeting. He had even arranged to pick Mr. Dick up at the Vermillion Bay bus station which gave him the opportunity for a face to face meeting before Dick actually started working for Anderson.

10. Furthermore, it is clear that Anderson assigned Dick to the Placer Dome job due to the complete uncertainty surrounding Dare's arrival. There is every reason to believe that Anderson had no idea whether or not Mr. Dare would show or whether he was "a no show". This is not uncommon in

the remote Red Lake area. As stated above the evidence supports the position that Anderson would not have hired Dare without a face to face meeting which he eventually did do after his return from the holiday.

11. On the other hand Mr. Dick had his own reasons why Mr. Dare should be working on May 17, 1996, which he knew to be the union's application date. He knew they needed as much help as possible to ensure the certification. It should not surprise anyone that Dick was confronted by those employees who were challenged as to their right to vote on the representation issue.

12. The evidence supports Mr. Anderson's version of his relationship with Mr. Dare. There is no evidence of his hiring without a face to face meeting. There was no reason to change that practice now. Therefore, I am not convinced he authorized Mr. Dick to put Dare to work on the school job in his absence. As a result Dare should not be entitled to vote.

III. Conclusion

13. I would determine that the following six persons were entitled to cast ballots in the representation vote in this application.

Jim Dick
Gary Gazankas
Harry Delorme
John Bouchie
Jeff Neufeld
Ken Forsyth.

14. It is patently unreasonable to proceed in any other way in this case where the employment connection is clearly known to all concerned. Preservation of the Board's practice should in this case give way to the interests of the real employees. The secret ballot vote will tell us their true wishes now.

2081-96-U Livent Inc., Applicant v. The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local #58, Toronto and James C. Fuller, Responding Parties

Strike - Employer seeking, but failing to obtain, commitment from union that it will not condone and that members will not engage in work stoppage as result of "Days of Protest" against provincial government - Employer asserting that union and union official threatening to call unlawful strike and that certain employees threatening to engage in unlawful strike in connection with "Days of Protest" - Employer's application dismissed

BEFORE: *R. O. MacDowell*, Chair.

APPEARANCES: *Angela Rae and Dan Brambilla* for the applicant; *James Fuller and William Hamilton* for the responding parties.

DECISION OF THE BOARD; October 22, 1996

I

What this case is about

1. This is an application under section 100 of the *Labour Relations Act, 1995* that was filed with the Board on October 17, 1996.
2. The applicant employer asserts that certain employees have threatened to engage in an unlawful strike on October 25 and October 26, 1996 - the so-called "Days of Action" sponsored by organized labour and various social action groups.
3. The employer further asserts that the responding trade union has called or authorized or threatened to call or authorize that unlawful strike, and that the President, James C. Fuller, has counselled, procured, supported or encouraged or threatened the unlawful strike.
4. Finally, the employer asserts that Mr. Fuller has "condoned" the threatened work stoppage, has done acts which he should know will cause employees to engage in an unlawful strike on October 25 and October 26, 1996, and has certainly done nothing to discourage that work stoppage.
5. It might be noted that the union and its President are the only named responding parties. No employees have been named as respondents, nor, so far as I know, have any employees been given formal notice of this proceeding.
6. A hearing in this matter was held on October 22, 1996. There is really no dispute about the applicable law. The only question is whether the facts establish that the responding parties (or either of them) has breached some provision of the *Labour Relations Act, 1995*.
7. On this point, the parties sharply disagree. Mr. Fuller maintains that neither he nor the union have threatened an unlawful strike. Nor have they counselled, procured, supported or encouraged employees to engage in an unlawful strike. Indeed Mr. Fuller not only denied the employer's allegations but maintained (and told the Board) that the union or its officials *would* not and do not support or encourage an unlawful strike by employees whom the union represents. The employer replies that the facts establish support or encouragement for the work stoppage, and by its silence, the union is encouraging its members to disobey the law.
8. I will turn to the facts in a moment. First, it may be useful to sketch in the legal framework applicable to this kind of situation. I will then consider how the statute applies to the evidence adduced at the hearing.

II

The Law Regulating Strikes in Ontario: Responsibility of Employees, Trade unions, and Trade union officials.

9. The *Labour Relations Act, 1995* contains a number of provisions respecting unlawful strikes. The main ones read as follows:

[Strike Definition]

1. (1) In this Act,

• • •

"strike" includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output.

* * *

46. Every collective agreement shall be deemed to provide that there will be no strikes or lock-outs so long as the agreement continues to operate.

* * *

[Employee Prohibition]

79.-(1) *Where a collective agreement is in operation, no employee bound by the agreement shall strike and no employer bound by the agreement shall lock out such an employee.*

(2) Where no collective agreement is in operation, no employee shall strike and no employer shall lock out an employee until the Minister has appointed a conciliation officer or a mediator under this Act and,

- (a) seven days have elapsed after the day the Minister has released or is deemed pursuant to subsection 122(2) to have released to the parties the report of a conciliation board or mediator; or
- (b) 14 days have elapsed after the day the Minister has released or is deemed pursuant to subsection 122(2) to have released to the parties a notice that he or she does not consider it advisable to appoint a conciliation board.

• • •

(6) *No employee shall threaten an unlawful strike and no employer shall threaten an unlawful lock-out of an employee.*

* * *

[Trade Union/Union Official Prohibition]

81. *No trade union or council of trade unions shall call or authorize or threaten to call or authorize an unlawful strike and no officer, official or agent of a trade union or council of trade unions shall counsel, procure, support or encourage an unlawful strike or threaten an unlawful strike.*

* * *

[Prohibition against persons causing strikes]

83.- (1) *No person shall do any act if the person knows or ought to know that, as a probable and reasonable consequence of the act, another person or persons will engage in an unlawful strike or an unlawful lock-out.*

(2) Subsection (1) does not apply to any act done in connection with a lawful strike or lawful lock-out.

* * *

[No Reprisals]

85. *No trade union shall suspend, expel or penalize in any way a member because the member has refused to engage in or to continue to engage in a strike that is unlawful under this Act.*

(emphasis added)

10. As will be seen, the statute contains a comprehensive code that prohibits unlawful strikes, threats of unlawful strikes and behaviour intended to encourage unlawful work stoppages. *Strikes are permitted only where there is no collective agreement in force, and the bargaining parties have completed the compulsory conciliation process contemplated by the statute. At any other time, strikes are absolutely prohibited.*

11. These provisions are part of a comprehensive regulatory scheme that has been in place for about 50 years. Under that scheme, collective bargaining is given a statutory framework which it lacked at common law, and trade unions are relieved of many of the common law disabilities which might inhibit the bargaining process. Strike regulations are only part of the overall scheme, and cannot be read in isolation from it.

12. The statute involves a balance. On the one hand, it supports collective bargaining, recognizes a freedom to strike, and immunizes lawful strike activity from both common law disabilities and certain forms of employer reprisal. But, at the same time, the statute regulates the manner and time in which such economic pressure can be exerted. In particular, the statute guarantees that once a collective agreement is signed, it becomes a “peace pact”: there can be no strike or lock-out during its term of operation. This is not just a matter of contract or private agreement with the union. The law requires it.

13. This is not the first time that the Board has had to deal with work stoppages that arise in connection with the “Days of Protest” that have been organized by the labour movement (and others) in various cities in Ontario over the last few months. In two recent cases, the Board has declared that the “no strike prohibition” applies with equal force to so-called “political protest strikes” of this kind. (See: *Re General Motors of Canada Limited*, [1996] OLRB Rep. May/June 409; and *Re de Havilland Inc. and Bombardier Regional Aircraft Division and CAW-Canada et al.*, Board File No. 2021-96-U decision issued October 17, 1996. See also: *Domglas Ltd.*, [1976] OLRB Rep. Oct. 569; affirmed by the Divisional Court (1978) 19 O.R. (2d) 353 where the Board reached the same result in respect of a work stoppage to protest federal wage controls.) *The Board has ruled that “political protest strikes” are still “strikes”, and if they occur during the term of a collective agreement, they are unlawful.*

14. If an unlawful strike does occur, an employer can seek a number of remedies. In *Monarch Fine Foods Limited*, [1986] OLRB Rep. May 661, the Board outlined the options:

- (1) Under section 100 an employer can seek a cease-and-desist order enforceable in the Ontario Court of Justice (General Division) as an Order of that Court. Disobedience can result in fine or imprisonment.
- (2) An employer may seek damages at arbitration for any lost profits or economic losses [see section 103 of the Act].
- (3) An employer can discipline employees who engage in unlawful concerted activity because engaging in a strike is a breach of their employment obligations which warrants at least some discipline, depending on the circumstances. (See for example: *Re Oshawa Group Ltd. and Teamsters Union Local 419* (1988), 33 L.A.C. (3d) 97 where the arbitrator upheld a 14-day suspension with consequent loss of pay for an employee engaging in an illegal strike.)
- (4) The employer may seek a consent to prosecute and subsequently prosecute employees

or the trade union for their breach of the law. An unlawful strike is not just a private protest. It is contrary to the *Labour Relations Act, 1995*. A successful criminal prosecution may result in fines of up to \$2,000 per day for employees and \$20,000 per day for the Union.

A variety of remedies may also be available to interested parties who are injured by an unlawful strike, or in respect of picketing in connection with an unlawful strike. Those remedies need not be elaborated here.

15. With this background, then, I turn to the facts in the instant case. Since the employer's evidence was not really disputed, the question becomes one of characterization; and, in particular, whether the facts adduced by the employer demonstrate a breach of the statute by the responding parties, or any of them.

The Evidence

16. The applicant, as its name suggests, stages performances at various theatre locations in Metropolitan Toronto. Among those locations is the Pantages Theatre at 244 Victoria Street in Toronto, and the North York Performing Arts Centre ("the Ford Centre") located at 5040 Yonge Street in North York.

17. Performances of the "Phantom of the Opera" are scheduled for the Pantages Theatre on October 25 and 26, 1996. On October 25 and 26, 1996 the company will also be preparing the Ford Centre for a presentation of "Ragtime". In both cases, the company will be employing workers represented by IATSE Local 58.

18. The applicant and IATSE Local 58 are parties to collective agreements that apply to the Pantages Theatre and to the Ford Centre. Both collective agreements are in full force and effect. In accordance with section 46 of the *Labour Relations Act, 1995* each collective agreement must have a "no strike clause". The clauses in the IATSE collective agreements read as follows:

ARTICLE SIX

STRIKE AND LOCK-OUT

6.1 The Union agrees that for the duration of this Agreement, neither the Union nor any stage employee shall take part in or call or encourage or threaten any strike or picketing which shall in any way affect the operations of Live Entertainment, nor shall there be any sympathy strikes or secondary boycotts. Live Entertainment agrees that it will not engage in any lock-out for the duration of this Agreement.

6.2 The word "strike" and the word "lock-out" as used in this Article shall have the same meaning given to those words in the Ontario *Labour Relations Act*, R.S.O. 1990, c.L.2.

6.3 The Union and the stage employees acknowledge that any violation of Article 6.1 will cause Live Entertainment and its patrons irreparable damage and, therefore, the Union and the stage employees agree that, in addition to any damages or other relief Live Entertainment would be entitled to receive under the *Labour Relations Act* or this Agreement, as a result of any violation of Article 6.1, Live Entertainment is entitled to an interim injunction without notice enjoining the Union, its officers, agents, members and the stage employees from violating Article 6.1.

19. The contractual language parallels the provisions in the *Labour Relations Act, 1995* reproduced above. The agreement makes it clear that there can be no lawful strike at this time. Nor can the union nor employees take part in, or call, or encourage, or threaten an unlawful strike, or cause an unlawful strike to occur by picketing or otherwise.

* * *

20. On October 9, 1996 Daniel Brambilla, Executive Vice-President of the employer, received a telephone call from James Fuller, President of IATSE Local 58. Mr. Fuller said that he was calling to inquire whether the company "would have a problem" if "his boys didn't show up for work on October 25 or October 26". Fuller explained that the Labour Movement was sponsoring "Days of Action" protests for those days, and that his members had indicated that they wanted to participate in those protests. Similar protests - including work stoppages - have already occurred in London, Kitchener, and Peterborough. Toronto is the current target.

21. Mr. Brambilla was concerned about the proposed withdrawal of workers from the two theatres. He advised Fuller that there was a "no strike provision" in each of the collective agreements, so that any work stoppage would be unlawful. Fuller responded that his members nevertheless wanted to participate in the protest scheduled for those days.

22. Brambilla then asked Fuller whether he (Brambilla) should provide the union with a written statement of the employer's position, which the union could share with its members. Fuller replied that he thought this was a good idea. However, Fuller was not prepared to give the company any written or verbal assurances that the union would not condone a work stoppage. Nor was Fuller prepared to say that the union would take any positive steps to discourage a work stoppage. Fuller merely said, once again, that "the boys want to do this and we will have to talk about it internally and decide what is going to happen".

23. On October 10, Brambilla wrote to Fuller setting out the company's concerns, pointing once again to the "no strike clause" in the collective agreement, and requesting assurances that "neither the union nor any stage employees will withhold their services on October 25th or October 26th ...". At the hearing Brambilla explained that he sought those assurances because a work stoppage at the Pantages Theatre would make it impossible to put on a show - causing losses of at least \$100,000.00. A work stoppage at the Ford Centre would derail the timetable for "Ragtime". In both cases, bargaining unit employees were necessary to do work in connection with lighting, sound, property and other stage work.

24. By letter dated October 10, 1996, (but sent by ordinary mail, received on October 15, 1996) Fuller responded:

October 10, 1996

Re: Ontario Labour Movement's "Days of Action"

Dear Mr. Brambilla;

In reply to your letter of October 10, 1996, I strongly believe that you have completely misconstrued our conversation. There was in no way a threat to withhold services on October 25th and October 26th rather I was asking your permission to support the "Days of Action".

In any event the response with your letter gives us an indication of what your answer to our request is and will be duly noted.

25. In a follow-up letter dated October 16, 1996, Brambilla once again sought Fuller's commitment that the employees would report to work as scheduled, and as required by the terms of the collective agreement. This time there was no reply; however, as I have already mentioned in the course of the hearing before me, Mr. Fuller assured the company that neither he nor the union would counsel, procure, encourage or support an unlawful work stoppage on October 25th or October 26th. Mr. Fuller

said that he thought he had made that clear in his letter of October 10, 1996, and that any suggestion to the contrary was a "misunderstanding" of his position.

26. The company is not comforted by this response. Its understanding (not denied by Mr. Fuller) is that the employees are still thinking about engaging in a work stoppage on October 25 and October 26. In the employer's submission, it is also reasonable to infer that the union is condoning and covertly supporting the planned work stoppage. The employer asks: why else would Fuller refuse to give the assurances requested, or take any positive steps to ensure compliance with the terms of the collective agreement?

Decision

27. If a group of employees engages in a work stoppage as a show of solidarity with organized labour, or to participate in an outside "political protest", that work stoppage is an unlawful strike within the meaning of the *Labour Relations Act, 1995* (see the two "CAW cases", *General Motors* and *de Havilland* mentioned above). It is clear, therefore, that on October 9, Mr. Fuller was advising the company that employees were considering, contemplating, planning or threatening a strike for October 25 and October 26, 1996. Such work stoppage would be prohibited under both the *Labour Relations Act, 1995*, and the terms of the parties' collective agreement; moreover, as of October 22nd, the strike threat remains a possibility - which has neither been denied nor discouraged by the trade union. On the contrary, the best evidence before the Board is that the employees are still considering whether they will engage in a work stoppage on October 25 and October 26 - which is to say, they are threatening to engage in an unlawful strike on those days.

28. But the employees are not named parties to this proceeding; and it is much less clear that *the union or its officials* have contravened the *Labour Relations Act, 1995*.

29. I do not minimize the employer's concern or its suspicion that the union's inaction or studied ambiguity masks a real intention to support (or at least not oppose) the actions being contemplated by its members. But it is one thing to be suspicious of the union's motives. It is another to conclude that the union has contravened the *Labour Relations Act, 1995* in some positive way. And, on balance, I am not persuaded that it has.

30. The first part of section 81 prohibits a trade union from calling or authorizing or threatening to call an unlawful strike. It contemplates some form of action by the trade union in conjunction with the work stoppage. However, there is no indication on the evidence before me that the union has done any of those things. The union did report upon its members' intentions, and, on the evidence, has done nothing to discourage them from engaging in such behaviour. But I do not think that I can conclude that the union, as such, has "called" or "authorized" or "threatened to call or authorize" an unlawful strike.

31. Nor can I conclude that Mr. Fuller has done anything to "counsel, procure, support, or encourage" a work stoppage by employees. Indeed, there is no evidence that he has communicated with employees at all about these matters. The only evidence is that the situation will be discussed at some point in the future. In the circumstances, I am not persuaded that this kind of activity triggers liability under section 81. Nor am I prepared to conclude that the union's inaction or non-committal response falls within the ambit of section 83 (which contemplates an "act" which a person knows will prompt others to engage in an unlawful strike"). Again, there is no indication of any communication between the union and its members on this point; and I am not, on the evidence before me, prepared to infer a positive act to encourage unlawful behaviour from the absence of any overt actions to discourage it.

32. This is not to say that inaction is irrelevant. Under the collective agreement the union may be held liable in damages if an unlawful work stoppage occurs (or is imminent) and the union does not take positive steps to rectify the situation (see generally *Brown & Beatty, Canadian Labour Arbitration*, (3d) C. 9, paras. 9:2430, 2432, and 2434). But I do not think that, in this case, the union's refusal to give the employer the assurances it seeks fits within section 83 of the Act or can be construed as a positive signal to employees that will induce them to engage in an unlawful strike. As I have already noted, there is no evidence that the interchanges between Mr. Fuller and Mr. Brambilla have been communicated to the employees at all.

33. For the foregoing reasons, this application is dismissed as against the responding union and its President - the named responding parties.

34. Such dismissal is, of course, without prejudice to the employer's right to bring a new application, on short notice, if the strike threats becomes more concrete. It is also without prejudice to any rights that the employer may have in this forum or elsewhere if employees *do* engage in the work stoppage that they are contemplating.

35. Finally, it is obvious that this is a matter of controversy in the workplace and may be the subject of further discussion within the trade union or among its members. Accordingly, it appears to me to be in both the public interest and the interests of the parties in this matter, if this decision is posted in the workplace so that all employees will understand their rights and obligations. It is so ordered.

1139-96-R Service Employees International Union, Local 204 Affiliated with the S.E.I.U., A. F. of L. C.I.O., C.L.C., Applicant v. **The McGill Club**, Responding Party

Bargaining Unit - Certification - Practice and Procedure - Board explaining new procedure for resolution of "status" disputes in connection with certification applications - Union and employer agreeing to bargaining unit descriptions excluding office and clerical staff - Parties disputing whether "receptionists" falling within exclusion - In view of parties' agreement on bargaining unit description, Board declining to consider whether including receptionists in bargaining units would create serious labour relations problems - Board also observing that parties should question some long standing assumptions and exclusions traditionally agreed to automatically regarding bargaining units - Board finding receptionists included in office and clerical exclusion and therefore excluded from bargaining units - Certificates issuing

BEFORE: *Janice Johnston*, Vice-Chair, and Board Members *J. A. Ronson* and *R. Montague*.

APPEARANCES: *Michael Wright, Linda Micks, Mary Brown, Lucy Brown* and *Marcia Krednester* for the applicant; *William Gale, Sandy Turney* and *Anne-Marie LaBorde* for the responding party.

DECISION OF THE BOARD; October 15, 1996

1. This is an application for certification in which the Board, (differently constituted) pursuant to section 9(2) of the *Labour Relations Act, 1995* (the "Act"), certified the applicant, the Service Employees International Union, Local 204 Affiliated with the S.E.I.U., A. F. of L., C.I.O., C.L.C. (the "union") by decision dated August 20, 1996 for the following bargaining units:

Bargaining Unit #1 (Full-Time)

All employees of The McGill Club in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, Fitness Instructors, office and clerical staff, and persons regularly employed for not more than 24 hours per week.

Bargaining Unit #2 (Part-Time)

All employees of The McGill Club in the Municipality of Metropolitan Toronto regularly employed for not more than 24 hours per week, save and except supervisors, persons above the rank of supervisor, Fitness Instructors, and office and clerical staff.

2. Section 9(2) provides as follows:

9. (2) Where, upon an application for certification, the Board is satisfied that any dispute as to the composition of the bargaining unit cannot affect the trade union's right to certification, the Board may certify the trade union as the bargaining agent pending the final resolution of the composition of the bargaining unit.

3. The only issue remaining in dispute after this decision and the issue that came before this panel of the Board concerned the status of persons classified as receptionists. There is one full-time receptionist, Mary Brown, and it appears that there are four part-time receptionists, Lucy Brown, Sandra Correia, Jackie Alvarez and Kelly Boyle. It was the position of the responding party, The McGill Club (the "employer" or the "club") that these individuals should be excluded from the bargaining unit pursuant to the "office and clerical staff" exclusion in both bargaining unit descriptions. The union takes the position that the receptionists should not be excluded from the bargaining unit.

4. As noted, the Board's determination with regard to the receptionist can have no impact on the final disposition concerning the bargaining unit description in this case. The bargaining unit description has been agreed upon and the union certified, the only issue remaining in dispute is whether or not the receptionists fall within the office and clerical exclusion. The Board's practice in the past in these circumstances was to either issue a final certificate to the union and refer the matter back to the parties to resolve (pursuant to *Robin Hood Multifoods Inc.* [1985] OLRB Rep. July 1159) or to issue an interim certificate and appoint a Labour Relations Officer to inquire into the duties and responsibilities of the disputed individuals. Such inquiry consisted of examinations in which the Officer might call and examine witnesses initially and then provide the parties with an opportunity to cross-examine these witnesses; both parties would then be given an opportunity to call and put witnesses or other evidence before the Officer; and the testimony of all witnesses was recorded and a transcript produced and distributed to the parties. The parties were then provided with the opportunity to make full written submissions and the dispute was ultimately resolved by a panel of the Board, generally without the necessity of a formal hearing.

5. Prior to the commencement of the hearing the Board confirmed that the parties were aware of the Board's Interim Information Bulletin No. 4 dealing with status disputes in certification applications. This information bulletin highlights the changes implemented by the Board in this area and was issued to the labour relations community on July 29, 1996 in the Board's monthly highlights.

6. The major change in this area concerns the appointment of Labour Relations Officers to conduct what have been traditionally referred to as "duties and responsibilities examinations" in status disputes. As was pointed out by the Chair of the Board in a Notice to the Community dated August 21, 1996, primarily for fiscal reasons, the Board will no longer be appointing Officers to conduct these types of examinations. Given the cutbacks the Board is facing, it has become necessary to implement a more expeditious process for dealing with this type of dispute. In addition, the changes to the certification procedures enacted by the Labour Relations Act, 1995, made it very clear that the government

wished to implement a process that provided for a speedy mechanism for resolving applications for certification. The Act provides for a representation vote to be held within five (5) days of the application unless the Board directs otherwise. To date, it is only in rare circumstances that the Board has been unable to hold the vote in accordance with this time frame. If the Board were to continue to utilize Officers to conduct examinations, for obvious reasons, it would significantly slow down the certification process and the ultimate disposition of cases.

7. Accordingly, the Board has implemented a process whereby disputes concerning “status” will no longer be referred to examinations before a Board officer. Significant opportunities have been built into the new process for settlement. If it becomes obvious that the issue or issues will need to be placed before a panel of the Board, the new process provides for extensive pleadings. The parties must file with the Board a written summary of the material facts upon which they intend to rely, detailing the reasons for their positions on the substantive matters in dispute. In addition, the parties are directed to attempt to agree on the procedural aspects of the upcoming hearing including the identification of “representative witnesses”, the question of who is responsible for ensuring that individuals in dispute attend the hearing (by summons or otherwise), the sequence in which individuals will be called as witnesses, and the days on which witnesses will be called. Failing agreement, the parties are directed to file with the Board and deliver to the other party written submissions detailing its position on the procedural aspects.

8. In this case, the Board in its decision dated August 20, 1996, reiterated the need for written submissions on both substantive and procedural matters. The decision contained the following direction:

4. The responding party is hereby directed to file with the Board and deliver to the applicant written submissions providing the reasons for their challenges and a summary of the material facts upon which they intend to rely by 5:00 p.m. on Wednesday, August 21, 1996.

5. The applicant is hereby directed to file with the Board and deliver to the responding party its response to the challenges, and a summary of the material facts upon which it intends to rely by Friday, August 23, 1996 at 5:00 p.m.

6. The parties have been strongly encouraged by the Board to do whatever possible to facilitate a speedy hearing, including the identification of representative persons. If the parties cannot agree on all of the procedural aspects of the upcoming hearing, each party must file with the Board and deliver to the other party, written submissions detailing its position on the outstanding procedural aspects by 5:00 p.m. on Friday, August 23, 1996.

9. Both parties filed a written summary of the material facts upon which they intended to rely, including documents, in accordance with the Board’s direction. With regard to procedural matters, the applicant indicated that the parties were unable to agree on a representative witness. The applicant suggested that as there was little in dispute of a factual nature, in terms of the duties and responsibilities of the receptionists, that the Board should review the material facts relied upon by the parties and determine if it was necessary to hear *viva voce* evidence or whether the Board should simply ask the parties to present their arguments with regard to the matter in dispute. Despite being directed to do so, the responding party did not make any submissions on procedural matters.

10. At the hearing, after ascertaining that the parties were aware of the Board’s new approach in status disputes, we indicated that we would like to hear submissions concerning the procedure to be followed at the hearing.

11. The applicant argued, as there was very little factually in dispute between the parties, that the Board should proceed directly to final argument. Counsel on behalf of the responding party suggested that the written submissions highlighted that the parties were essentially in agreement upon the facts. However, he argued that there was some dispute with regard to the scope of certain functions

and the significance of those functions. Counsel argued that the Board should hear *viva voce* evidence on these points. When the issue of a representative witness was raised by the Board, the parties were unable to agree on an individual or two individuals.

12. After reviewing the written summaries of the material facts provided to the Board by the parties, as supplemented by some additional factual agreements made at the hearing, the Board determined that it had sufficient material before it upon which to make a decision. In coming to this decision the Board noted that there was agreement on many of the material facts and that those in dispute were not crucial to the determination before the Board. In our view, there must be some good or compelling reason which requires the Board to hear *viva voce* evidence, considering the attendant delays and costs inherent in doing so. In this case we were satisfied that the parties had had full opportunity to put the relevant facts before the Board and given the materials filed we were of the view that we could make a decision based on the materials before us. Accordingly, in the circumstances of this case, the Board elected to proceed directly to final argument. Before setting out the final argument we turn to our conclusions of fact.

13. The parties were in agreement that the following list of duties and responsibilities accounted for approximately 80 percent of the receptionist's working hours.

- (a) checking members' cards, signing in guests and explaining the Club to member guests or other individuals with guest passes;
- (b) providing wake up calls to members who are in the common areas of the Club;
- (c) operating the members' lost and found;
- (d) calling members to remind them of committee meetings;
- (e) booking members for courses which are taken through the Club, such as ceramics;
- (f) contacting the valet on behalf of the members;
- (g) keeping the members' car keys if the valet is not present and then providing the keys to the valet with instructions;
- (h) answering the telephone and directing calls to lines for staff, members and guests;
- (i) changing the function board each evening in preparation for the events on the following day;
- (j) selling t-shirts, mugs and muffins to members and guests and receiving payment for same;
- (k) taking reservations for the restaurant; and
- (l) maintaining the member comments book, which involves simply summarizing comments sheets after the office staff have already reviewed them and decided on the appropriate action to be taken, if any.

14. The duties described in (b), (c) and (j) do not take up a significant amount of time.

15. All staff are required to fill in a sign-in sheet indicating the time they arrived to commence work and the time they finish work. This sheet is maintained at the reception desk by the receptionist who submits it to the office on a daily basis. They are also responsible for ensuring that members and delivery and service people sign in before entering the Club. As a part of this process the receptionists monitor the number of visits made by "out-of-town" members who have a limited number of entries. Employees collect their pay cheques from the receptionists. The receptionists track and distribute mail to members of the Club, the Board of Directors and staff. On occasion, receptionists complete typing duties such as preparing envelopes or labels for mailing. They also type all new and renewed membership cards and issue these cards. The receptionists maintain a log of membership card numbers and expiry dates.

16. In addition to performing the switchboard function for the Club, which consists of answering internal and external telephone calls and transferring these to the appropriate staff person or member, the receptionists maintain a log of all outgoing long distance calls placed by staff which is submitted to the office every two weeks and the appropriate person charged for the call. The Club's safe is located at the receptionists' work station and the receptionist is responsible for maintaining it. Whenever a deposit is made to the safe it is noted on a document appropriately entitled the "Safe Deposit Sign-In Sheet". Receptionists can make cash deposits without the necessity of a witness to the deposit. Although other non-management staff can and do make cash deposits to the safe, this deposit must be witnessed by the receptionist. A record of the safe deposit sign-in sheets is maintained in the reception area. The receptionists complete one or more Deposit Sheets each day detailing cash, credit card and signing privilege transactions. These are then submitted to the accounting personnel as part of the accounting reconciliation process. The restaurant, nursery and valet parking services submit a sheet listing goods and services that members have signed for within the Club to the receptionists who are responsible for applying the charges to the members' credit cards and completing debit forms which are submitted to the office.

17. Notification of changes to member's information are received by receptionists from members, either on the telephone or in person. Receptionists then complete a Notice of Changes to Member's Information Form and submit the form to the office for record updating. The receptionists maintain a record of the lock combinations of each club member.

18. The receptionists are located at the main entrance to the Club and are often the first contact for Club members, staff, delivery people and service people. Due to this location and their duties, they frequently interact with Club members and other employees.

19. The office and accounting staff are located on the fourth floor of the Club in an area which is separate from the common areas of the Club which are frequented by members.

20. Both the union and the employer provided the Board with organization charts for the Club. The chart provided by the employer was dated 1995, and the one provided by the union appears to be dated 1996. In the 1995 chart, the receptionists are shown reporting to the Member/Service Director, who is also responsible for employees in maintenance, housekeeping and valet, all areas which are included in the bargaining unit. In the 1996 chart, the receptionists report to the Manager, Marketing and Membership as do the maintenance, valet, housekeeping and nursery employees. On the 1995 chart there is a position referred to as Senior accountant with two assistants reporting to it. The 1996 chart has substituted the position of Manager, Accounting and Administration for that of Senior Accountant. That position has two accountants and a vacant position for office reception/assistant reporting to it. It is not necessary to resolve which chart is more accurate. It is clear from both charts that for reporting purposes, the receptionists are included in a group of functions which are part of the bargaining unit. They do not report to the Senior Accountant or Manager Accounting and Administration, whereas the

other office and clerical employees who were agreed upon as excluded from the bargaining unit do so. On May 17, 1996 the following memo was issued to staff.

MEMORANDUM TO: ALL STAFF
FROM: SANDY TURNEY
RE: STAFF REORGANIZATION

In keeping with our continuing growth and focus on both membership services and food and beverage, we are reorganizing our staff as follows, to be effective beginning June 1, 1996. The staff chart on the reverse reflects the new structure.

Elly Vlietman is Manager, Accounting and Administration. Elly will be responsible for the accounting and administrative/office systems and operation.

Jo Ann James - continues as Fitness Director. She will be focusing on getting new members quickly involved and helping current members improve their use of the Club.

Henri Schmidt - will continue to do excellent work for our rapidly expanding Food and Beverage area, supervising the kitchen staff and the Spa Cafe.

Michael Brady - is assuming a new full time staff role as Manager of Catering and Programming. In this role he will be responsible for catering functions and our Atrium service staff. Michael will continue to coordinate programming events, many of which integrate with the Food and Beverage Department. As assistant Programming staff to be hired at a later date will assist Michael in both areas.

Erin McBride - is assuming a new position as Manager and Marketing and Membership Services. In this role she will continue to work on marketing for all program areas, and will supervise the areas that provide service to our membership. These include the nursery, valet services, housekeeping, and maintenance and the reception area.

The next year is a critical and more exciting year given our financial rebuilding and growing volume of business. Please feel free to discuss or ask any questions.

For reporting purposes this memo reiterates that the receptionists are being included with bargaining unit staff under the heading "areas that provide service to our membership".

21. The office and accounting staff who work on the fourth floor are salaried employees. The receptionists are paid on an hourly basis. Some of the employees in the bargaining unit, such as the housekeepers, are paid on a salaried basis whereas other bargaining unit members are paid hourly.

22. The employees who are included in the bargaining unit are employed in classifications such as: nursery, valet, catering/wait; kitchen/spa, and housekeeping. As such, many of them provide services directly to the members of the Club.

Argument

23. Counsel on behalf of the union agreed to proceed first in final argument. He took the position that the receptionists should be included in the bargaining unit because their primary function is physically servicing the members of the Club. The question before the Board in his view, is whether the receptionists provide direct member services (as do the bargaining unit members) or whether they are office and clerical. In deciding this issue, counsel suggested that the Board review carefully: what the receptionists do and don't do; how the Club organizes itself and the reporting relationships; the fact that the receptionists are geographically separate from the other office staff and are involved in direct membership service; the fact that although the receptionists handle money, so do other staff such as valets and food services staff; and that the receptionists are paid hourly while the office staff are on salary. Pursuant to the test articulated by the Board in the *Hospital for Sick Children*, [1985] OLRB

Rep. Feb. 266, counsel argued that the Board in this case must ask the question “is there anything you can point to that creates a problem if the receptionists were put in the bargaining unit”. It would not create a viable collective bargaining structure to exclude the receptionists from the unit applied for and leave them in the position of having to apply for a separate unit on their own or with the office and clerical staff. This would result in small unit of five or six people and counsel questioned how viable a bargaining unit that would be in the event of a work stoppage. Counsel also brought to the Board’s attention the fact that the union’s scrutineer at the representation vote was Lucy Brown (the full-time receptionist) and that the employer’s representative was Ann Marie LaBorde, one of the Accountants who was excluded from the bargaining unit pursuant to the office and clerical exclusion. Counsel argued that the fact that the receptionists supported the union and Miss LaBorde supported the Club was further evidence of the fact that the two groups of employees do not share a community of interest and are as he put it “on opposite sides of the fence”.

24. In support of his position that the receptionists should be included in the bargaining unit counsel referred the Board to four cases. In the *Price Club Westminster*, [1992] OLRB Rep. Oct. 1098, the Board dealt with the scope of the bargaining unit exclusion of office and clerical staff and in particular whether or not numerous positions including the position of membership clerk fell within that exclusion. Counsel suggested that the receptionists in the case before us perform many of the same duties as did the membership clerks in the *Price Club* case. The membership clerks were included in the bargaining unit by the Board in that case as the Board concluded that they did not fall under an “office and sales” exclusion. Counsel referred to *Burns International Security Services Limited*, [1994] OLRB Rep. Apr. 347 for the analysis contained in paragraphs 28 and 29 of that decision concerning the approach the Board takes in determining an appropriate bargaining unit. In counsel’s view, the analysis was equally applicable to the facts before us. Based on that Counsel urged us to include the receptionists in the bargaining unit. In support of his position that the geographic location of the receptionists, both apart from the other office staff and adjacent to some of the bargaining unit staff was an important consideration in this case, counsel referred the Board to *Domtar Chemicals Limited*, [1968] OLRB Rep. Oct. 719. In that case the Board concluded that persons classified as stockroom clerk and assistant stockroom clerk belonged in a unit of production employees due to their physical location and the nature of their duties. In *Hamilton Entertainment and Convention Facilities Inc.* March 27, 1991 Board File No. 1232-90-R, (unreported) the Board concluded that box office staff were not excluded from a bargaining unit of ushers/usherettes and bartenders pursuant to the “office, clerical and sales staff” exclusion in the bargaining unit description. Counsel urged us to reach the same conclusion as the Board came to in that case. In it, despite the fact that the nature of the work performed and the skills used by the box office staff were somewhat more akin to clerical employment than ushering or bartending, the Board found that the box office staff nevertheless shared a greater community of interest with the other employees in the bargaining unit than the office and clerical staff. Counsel argued that this conclusion was equally supportable on the facts before us.

25. In conclusion, counsel for the union urged us to not get caught up in the title of the position but to look at what the receptionists do and where they do it. Excluding the receptionists from the bargaining unit would impede their ability to organize and including them in the bargaining unit would have no adverse impact on the Club, its clients or other bargaining unit employees. Counsel pointed to the memo issued on May 17, 1996, which included the reception area as an area providing service to the membership, as indicative of the fact that the reception area and the receptionists shared a community of interest with the other employees included in the bargaining unit.

26. Counsel for the employer argued that the receptionists should not be part of the bargaining unit. Counsel pointed out that the union chose a bargaining unit which excluded clerical staff and in counsel’s view the receptionists are clearly covered by the office and clerical exclusion. It is with the other office and clerical staff that the receptionists share a community of interest. Counsel disagreed

with the assertion by union counsel that the question before the Board was whether or not the receptionists provided direct member services. In his view, it was important to look at the nature of the organization. Everyone is engaged in providing service to the Club members, some of it directly and some of it indirectly. He pointed out that there are employees in the bargaining unit who do not provide service directly to the members, such as the dishwasher or housekeepers, and that there are staff in the bargaining unit such as valets or nursery staff, who do provide a direct service. Although the office staff service members from primarily an accounting perspective, they also deal directly with members and answer their questions. Counsel suggested that there is no employee in the organization who does not deal with and service the members of the Club.

27. Employer counsel characterized the dealings of the receptionists with the Club's clients as merely an extension of the office staff. The receptionists in his view, are merely an extension of the accountants with regard to some of their duties. He pointed to the fact that the receptionists process credit card payments and are responsible for handling cash and maintaining the safe. The receptionists maintain a log of membership card numbers and expiry dates which is essentially the inventory of the Club. Counsel pointed to the fact that the receptionists keep track of the long distance telephone calls so that they can be accounted for when the telephone bill arrives as an example of the receptionists interacting directly with the accounting office.

28. Counsel for the employer argued that the receptionists perform an important monitoring function. They are responsible for maintaining the sign in sheet, tallying the time worked and submitting the information to the fourth floor to calculate the payment to employees. He submitted that the receptionists are responsible for monitoring the accuracy of the time other staff sign in and reporting any discrepancies to the Club management. This creates a conflict of interest with other bargaining unit members in his opinion. In addition, the fact that the receptionists have access to confidential information concerning which members are in default of payment of their fees, could be prejudicial to the Club's ability to negotiate a collective agreement if it fell into the union's hands as it is financial information which goes to the health of the company. The receptionists perform primarily administrative/clerical functions, as defined by counsel for the Club, as anything connected to maintaining records.

29. In support of his submissions counsel for the employer referred the Board to two cases, *Highbury Ford Sales Limited*, [1986] OLRB Rep. Jan. 94 and *Bond Place Hotel*, [1982] OLRB Rep. Aug. 1135. Counsel suggested that the fact that in the *Highbury Ford Sales* case the Board concluded that the positions in dispute were part of the office exclusion despite the fact that they were located in a geographically separate location, provided support for the employer's position that what should determine this matter is what the receptionists actually do, not where they are located. Counsel asserted that in our case it was crucial to look at the flow of information from the receptionists to accounting. Although the receptionists are on the front line and deal with members, the interaction is primarily on an accounting/administrative basis. In the *Bond Place Hotel*, *supra*, switchboard operators were found to be part of the "office staff, front desk staff" exclusion. Counsel for the employer suggested that the facts in the two cases were similar. Both positions fielded incoming calls, provided wake-up calls and dealt directly with clients.

30. In response to the union's final arguments, counsel for the employer suggested that the employer's choice of scrutineer was purely coincidence as they chose someone who could identify the voters. In his view, no significance should be attached to it. In addition, no conclusions should be drawn from the organization charts or the memo dated May 17, 1996 as they are simply indicative of the fact that the Club is trying to evolve to a more efficient organization. In counsel's view, how the Club was trying to organize itself did not shed any light on the community of interest issue concerning the receptionists. Counsel suggested that the *Price Club* case (*supra*) was not helpful because it was dealing with an "office and sales" exclusion and that in that case the parties had agreed that the receptionist

was covered by the office staff exclusion. As the *Burns* case (supra) only dealt with one classification, it was not helpful in counsel's opinion. In conclusion, counsel for the employer argued that the receptionists deal with confidential information, do not share a community of interest with the other employees in the bargaining unit and should be excluded from it.

31. In reply, counsel for the union argued that the receptionists do not have any responsibility for ensuring that employees record their hours accurately. In his view, the conflict of interest that would occur if another staff member did attempt to misstate his/her hours would be no different than the conflict of interest which would be present if any employee saw another employee stealing food or acting inappropriately. Counsel disputed the employer's characterization of the document pertaining to the members who are in default of their fees as being confidential, as the document sits at the receptionists desk, one of the most public places in the building. Counsel distinguished the *Highbury Ford* case (supra) on the basis that in it, the Board's analysis focused on who the individuals in dispute interacted more with and with whom they shared similar skills and abilities. There is no indication in the case before the Board that the receptionists have any specific accounting skills or could perform the functions of an accountant. The *Bond Place Hotel* case (supra) is not helpful in counsel's opinion as there are few facts provided to justify the decision.

Decision

32. Cases of this nature turn on their facts. Therefore, while the cases provided by the parties provide some insight into the approach the Board brings to this type of enquiry, they are not directly on point.

33. The Board's task in this case is simple. The parties have agreed on a bargaining unit description that excludes office and clerical workers. The issue before us is *not* the appropriateness of the bargaining unit proposed by the applicant, as the parties have reached agreement on that issue. The point we must decide, is whether or not the receptionists are covered by the office and clerical exclusion. In essence, we must examine their duties and responsibilities and determine if they fit within what has always been referred to as the "office and clerical" exemption. While it is appropriate as part of this process to look at with whom the receptionists share a community of interest, by assessing such factors as: what the duties and responsibilities of the receptionists are; the terms and conditions of their employment; where they fit in the organization, and with whom do they share functional coherence and interdependence, it is not appropriate to apply the test articulated in the *Hospital for Sick Children* (supra) in the manner suggested by counsel for the trade union to this exercise. The *Sick Kids* test reads as follows:

Does the unit which the union seeks to represent encompass a group of employees with a sufficiently coherent community of interest that they can bargain together on a viable basis without at the same time causing serious labour relations problems for the employer?

34. In *Sick Kids*, supra the Board was focused on determining an appropriate bargaining unit structure. That is the task to which the test relates. The factors germane to that process are not necessarily relevant to the task we are facing. For example, when the Board is assessing bargaining unit structure, and in particular the appropriateness of the bargaining unit applied for, it considers issues such as the viability of the proposed structure and whether the proposed bargaining unit description limits access to collective bargaining opportunities for some employees. In the context of this case, if the union was concerned regarding the ability of the receptionists to access collective bargaining opportunities, why did they agree to an office and clerical exemption? While one answer might be because the union viewed them as not falling within this exclusion, surely the union realized that this conclusion was by no means certain. In addition, it is not appropriate for us to assess whether including the receptionists in the bargaining unit would create serious labour relations problems for the employer

as we are not, in this case, determining the bargaining unit structure but whether or not the receptionists perform office and clerical work.

35. The Board will not, except in extreme circumstances, go behind the agreement of the parties with regard to the bargaining unit description, an agreement normally based on traditional assumptions and the Board's jurisprudence. However, the parties should question some of the long standing assumptions and exclusions traditionally agreed to automatically. The Board in *Motor Coach Industries*, [1992] OLRB Rep. June 744, has sent a clear signal to the labour relations community that automatic reliance should no longer be placed on antiquated Board policies which may have no relevance or applicability in today's workplace. In the *Motor Coach Industries* case, the Board in concluding that an all employee bargaining unit which included office and clerical staff, was an appropriate bargaining unit stated:

12. In *H. Gray Limited*, *supra*, the Board made these observations:

The Board, since its inception, has held the view that the interests of office employees and plant employees are divergent. In the early days of the Board's history, the Board's policy was that "the two groups should be included in the same bargaining unit only if they clearly express a preference for organization along those lines (see *Corbin Lock Case*, (1944) D.L.S. 7-1109 CCH CANADIAN LABOUR LAW REPORTER Transfer Binder, ¶16,406). Subsequently, in 1946, in the *Northern Electric Case* (unreported), the Board reconsidered its policy relating to office workers and came to the conclusion, based on the wider experience it had gained by that time, that, in the interests of all parties, office workers should be placed in a bargaining unit separate and apart from other employees, even though, as was the fact in that case, there was evidence that the office employees clearly expressed a preference for inclusion in the same bargaining unit with other employees. In 1947, the Board, differently constituted, held, in the *Electric Auto-Lite Case*, (1947) D.L.S. 7-1343, CCH CANADIAN LABOUR LAW REPORTER, Transfer Binder, ¶16,499, that a trade union which represented the plant employees of an employer could not be certified as bargaining agent on behalf of his office workers. ...

... Whatever the situation may have been under the legislation in force in 1947, we are unable to find anything in the present Act which confers upon the Board, either expressly or impliedly, authority so to limit the choice of the employees in the present context. ... I am of the opinion that the principle of the *Electric Auto-Lite Case* (*supra*) has no application under the present legislation except where a case comes within the terms of section 8 [now section 12] of the Act and that the same trade union, whether it be an "international" or a "local" of an "international", may be certified as bargaining agent for a bargaining unit of office employees as well as for a bargaining unit consisting of other employees. However, nothing I have said here is to be taken as indicating an intention to depart from the long established policy that in certification proceedings - and I am not concerned here with what parties may do in voluntary recognition situations or in collective bargaining following certification - the Board ought to place office workers in a bargaining unit separate and apart from other employees, save in the most exceptional circumstances. ...

The decision in *H. Gray Limited*, *supra*, does not say what sort of "office" and "plant" were contemplated by the long established policy to which it refers, nor does it indicate what circumstances had led the Board to conclude as a general matter that the interests of office employees and plant employees were so divergent as to warrant a "policy" of almost invariable separation. The observation in *H. Gray Limited*, *supra*, that the Board had held this view "since its inception" suggests that those circumstances, whatever they may have been, were circumstances prevailing in the mid-1940's when the Board was first established. Reference to the *Corbin Lock Case* is of no assistance in pursuing these issues, as that decision does no more than recite that "in the opinion of the Board, the interest of employees in a plant and those in an office are so divergent that the two groups should be included in the same bargaining unit only if they clearly express a preference for organization along these lines." Again, there is no description of the characteristics of "plant" and "office" employment or other matters which are said to warrant this opinion. The *Electric Auto-Lite Case* is equally silent on these points, and the unreported *Northern Electric Case* decision referred to in *H. Gray Limited*, *supra*, is not available to us.

13. The “policy” in question is one which had fully matured more than forty-five years ago. In the state of the reported jurisprudence, we can only speculate on the facts and circumstances which might then have led the Board to articulate a “policy” that office workers would be excluded from a plant unit “except in the most exceptional circumstances.” On the face of it, the basis of these pronouncements was its assessment of community of interest. We have no difficulty imagining that circumstances in which plant and office employees shared an adequate community of interest were “exceptional” in the workplaces being organized in the 1940’s. It would have made sense for the Board to make it very clear that arguments for inclusion of office workers in the units sought by trade unions were unlikely to succeed, if that was its experience. We do not think that the Board’s statements about the conditions of the 40’s and 50’s can be taken as an undertaking that the Board would continue to apply an “exceptional circumstances” test into the 90’s despite changes in the nature of the workplaces being organized.

14. The nature and kinds of employment and the ways in which jobs are created, staffed and valued have all changed considerably in the last forty-five years. The fact that one person’s work area is described as an “office” and another’s is not does not always carry with it the same implications as it did forty-five years ago. We imagine that a workplace like this one, where the same pay scheme applies equally to office and “plant” employees and where office employees can apply for and are transferred to “plant” jobs and *vice versa*, would have been “most exceptional” in the 40’s and 50’s. We are not confident that that is so today. In any event, section 6 of the Act requires us to determine what is “appropriate”. As the Board observed in *Hospital For Sick Children*, [1985] OLRB Rep. Feb. 266, at paragraph 23, that involves answering this relatively simple question:

Does the unit which the union seeks to represent encompass a group of employees with a sufficiently coherent community of interest that they can bargain together on a viable basis without at the same time causing serious labour relations problems for the employer?

The question the Board has to address does not change because office and clerical employees are involved. The question is still whether the unit proposed by the applicant is appropriate, not whether the circumstances can be described as “most exceptional.”

15. The separation of “office and clerical employees” from others in composing a bargaining unit is sufficiently conventional that the Board will act without further inquiry on an otherwise unchallenged agreement by affected parties that such a course of action is appropriate. Equally, given the diversity of modern jobs and of the workplaces in which they are performed, it is also possible today to imagine workplaces in which an “all employee” unit from which “office and clerical employees” are *not* excluded would be entirely appropriate. The agreement of the parties does not relieve the Board of its obligation to make a finding under section 6 of the Act that a unit agreed to is appropriate. The appropriateness of an inclusive unit is sufficiently plausible, however, that the Board has acted and will act on an unchallenged agreement that it is appropriate without further inquiry and, in particular, without requiring that “most exceptional circumstances” be pleaded or proven.

16. In this case, the respondent’s own treatment of the affected employees as a single unit for purposes of employee relations and the history of employee transfer between the groups which the respondent sought to have us separate demonstrated that the employees in the unit sought in this case shared a sufficiently coherent community of interest that they should be able to bargain together on a viable basis. The employer did not argue that this would cause it any labour relations problems, serious or otherwise. It simply argued that we had been shown no particular reason to “depart” from the “policy” pronounced in *H. Gray Limited*. For the reasons we have already set out, we did not find that argument compelling. The test propounded in *Hospital For Sick Children*, *supra*, having been satisfied, we found that the unit sought by the applicant was appropriate.

36. As the parties have agreed upon a bargaining unit structure that excludes office and clerical workers in this case, it is no longer an option open to us to reach a determination that it is appropriate to include office and clerical employees in this bargaining unit. The task before us is a more narrow one. We must determine whether or not the receptionists are part of the office and clerical exclusion.

37. Since the beginning of the Board's involvement in defining the scope of the office and clerical exclusion, receptionists appear to have automatically been included in this exclusion. Either the parties turn their minds to the issue and agree on the receptionists inclusion within the office and clerical exemption, or the receptionists inclusion is taken for granted. We have not been able to find any cases nor were any provided to us by the parties dealing with the issue of whether or not receptionists should or should not be included in the office and clerical exemption.

38. In this case the applicant asserts that one of the questions the Board has to determine is whether the receptionists provide direct member services (as do the bargaining unit members) or whether they are office and clerical. We do not find this focus or approach particularly helpful for a couple of reasons. First of all, we accept the employer's position that as the Club is a service organization all of its employees are involved in providing service, either directly or indirectly to the members. Employer counsel pointed to examples of employees who provide indirect service who are in the bargaining unit as well as examples of employees in the bargaining unit who provide a direct service. Secondly, it appears to us that the primary role of most receptionists is to be the initial contact for customers, clients and suppliers. Receptionists by definition "receive" people and callers and therefore have a great deal of contact with the people involved in the organization. Therefore it is almost invariably part of a receptionists' job to provide service directly to the employer's clients, employees, customers, suppliers, contractors etc. To determine whether employees should be included in the bargaining unit or share a community of interest with the bargaining unit members solely on the basis of whether they have regular direct contact with the Club members would be inappropriate in our view.

39. It is not necessary to list again all of the duties and responsibilities performed by the receptionists. In our view, a clear linkage based on the flow of information from the reception area to the office has been established. Most of the duties and responsibilities previously outlined are administrative or clerical in nature and are supportive of the office and accounting function rather than those functions carried out by the bargaining unit members. However, the terms and conditions of employment of the receptionists bear more similarity to those of the bargaining unit employees than the office and clerical workers. The receptionists are not treated the same in terms of wages as the other office workers as they are paid hourly and the other office workers are on a salary. By anyone's description, the receptionists are not part of the reporting structure of the office nor are they geographically located in the same area as the other office workers. After having carefully reviewed this matter we are of the view that the receptionists share a community of interest with both the other office and clerical staff and the members of the bargaining unit. In addition, we do not accept that any "monitoring" functions performed by the receptionists would create a conflict of interest with the other bargaining unit employees.

40. However, having said that, we are also of the view that as their duties are primarily those which we find to be administrative and clerical in nature, they share a greater community of interest with the office and clerical workers and must accordingly fall within the office and clerical exemption. The collection of information and data by the receptionists which then flows to the office accounting staff, forms an integral part of the Club's office and administrative function. Clearly, much of the work performed by the receptionists in this case is not dissimilar from work performed by receptionists generally. It would strain credulity to conclude that the work they perform is not office and clerical or administrative in nature.

41. In addition, what the union appears to be doing in this case is asking the Board to include in the bargaining unit some of the Club's office and clerical employees, but not all of them. This is not appropriate. Either the bargaining unit description includes office and clerical employees or it does not. In this case the union agreed to exclude office and clerical workers.

42. Accordingly, for the reasons stated, we find that the receptionists are included in the office and clerical exclusion and are therefore excluded from the bargaining unit. As this was the only issue remaining in dispute, a final certificate shall now issue for the bargaining units referred to in paragraph 1 of this decision.

2097-96-U Toronto Transit Commission, Applicant v. Gord Wilson, Sid Ryan, Linda Torney, Ontario Federation of Labour, Canadian Union of Public Employees, and Labour Council of Metropolitan Toronto, Responding Parties v. Ms. Meenu Sikand-Taylor, Intervenor

Charter of Rights and Freedoms - Constitutional Law - Strike - Picketing - Remedies - Toronto Transit Commission ("TTC") alleging that certain protest leaders and labour organizations violating section 83 of the Act by making certain statements and encouraging picketing at TTC sites in effort to ensure that TTC unable to operate during "Days of Protest" against Provincial Government - Respondents arguing that "talking" and "speaking", as opposed to "acts", not falling within ambit of section 83 - Respondents also arguing that section 83 should be read subject to respondents' Charter rights and that there was no causal connection established between protest leaders statements and unlawful strike that might result - Board dismissing application against labour organizations on grounds that only "persons" may breach section 83 of the Act - Board finding and declaring that two of three named individual respondents violated section 83 of the Act - Individual respondents directed to cease and desist from encouraging persons to picket TTC premises as restricted by the Board - Board prohibiting picketing in and around access points identified by TTC if it will interfere with employees' access to work - Picketing at subway stations also restricted during certain specified hours - Individual respondents directed to advise participants in "Days of Protest" of declarations and directions made by the Board

BEFORE: *Robert Herman*, Alternate Chair, and Board Members *S. C. Laing* and *D. A. Patterson*.

APPEARANCES: *Douglas K. Gray, Robert A. Zigler, Michael J. Kennedy, Gary Webster, Lori Findleton* and *Kavita Chhiba* for the applicant; *James Hayes* for Labour Council of Metropolitan Toronto and *Linda Torney*; *Judith McCormack, B. Sheehan* and *Andrea Bowker* for *Gord Wilson, Sid Ryan*, Ontario Federation of Labour and Canadian Union of Public Employees; *Brian Shell, Mark Rowlinson* and *Meenu Sikand-Taylor* for the intervenor.

DECISION OF ROBERT HERMAN, ALTERNATE CHAIR, AND BOARD MEMBER S. C. LAING; October 24, 1996

1. This decision represents the written version of the decision provided today orally to the parties at the hearing.

2. This is an application brought by the Toronto Transit Commission ("TTC") pursuant to section 100 of the *Labour Relations Act, 1995*, in which it alleges that Gord Wilson, Sid Ryan, Linda Torney, the Ontario Federation of Labour, the Canadian Union of Public Employees, and the Labour Council of Metropolitan Toronto have breached the provisions of section 83 of the Act. The TTC alleges that these various responding parties have breached section 83 through various statements and communications they have made, in efforts to ensure that the TTC is unable to operate during the "Days of Protest". More specifically, the TTC alleges that these individuals and organizations have been

appealing to people across the Province to protest and picket at TTC sites throughout Metropolitan Toronto, so that the TTC will not be able to operate. The TTC further alleges that because its sites will likely be picketed, as a result of these communications and statements, the members of one of its unions, Amalgamated Transit Union, Local 113 will not cross the picket lines to work, as scheduled, and will therefore engage in an unlawful strike. The TTC seeks various directions from this Board finding that the Act has been breached, and providing remedial relief from the picketing.

3. Section 83(1) of the Act reads as follows:

83. (1) No person shall do any act if the person knows or ought to know that, as a probable and reasonable consequence of the act, another person or persons will engage in an unlawful strike or an unlawful lock-out.

4. The TTC argues that the statements made at various times by Mr. Wilson, Mr. Ryan and Ms. Torney constitute "acts" within the meaning of section 83, and the responding parties making the statements knew or ought to have known, that as a probable and reasonable consequence of those statements, protesters would picket around TTC sites. In turn, the probable and reasonable consequence of such picketing would be that members of the Amalgamated Transit Union ("ATU") scheduled to work would not do so, and would thereby engage in an unlawful strike.

5. The Board has already had to deal with applications that have arisen in connection with the "Days of Protest". In a recent decision in *Livent Inc.* (Board File No. 2081-96-U), the Chair of the Board described the legal framework in which the instant application arises, as follows:

10. As will be seen, the statute contains a comprehensive code that prohibits unlawful strikes, threats of unlawful strikes and behaviour intended to encourage unlawful work stoppages. *Strikes are permitted only where there is no collective agreement in force, and the bargaining parties have completed the compulsory conciliation process contemplated by the statute. At any other time, strikes are absolutely prohibited.*

11. These provisions are part of a comprehensive regulatory scheme that has been in place for about 50 years. Under that scheme, collective bargaining is given a statutory framework which it lacked at common law, and trade unions are relieved of many of the common law disabilities which might inhibit the bargaining process. Strike regulations are only part of the overall scheme, and cannot be read in isolation from it.

12. The statute involves a balance. On the one hand, it supports collective bargaining, recognizes a freedom to strike, and immunizes lawful strike activity from both common law disabilities and certain forms of employer reprisal. But, at the same time, the statute regulates the manner and time in which such economic pressure can be exerted. In particular, the statute guarantees that once a collective agreement is signed, it becomes a "peace pact": there can be no strike or lock-out during its term of operation. This is not just a matter of contract or private agreement with the union. The law requires it.

13. This is not the first time that the Board has had to deal with work stoppages that arise in connection with the "Days of Protest" that have been organized by the labour movement (and others) in various cities in Ontario over the last few months. In two recent cases, the Board has declared that the "no strike prohibition" applies with equal force to so-called "political protest strikes" of this kind. (See: *Re General Motors and CAW-Canada*, [1996] OLRB Rep. May/June 129; and *Re de Havilland Inc. and Bombardier Regional Aircraft Division and CAW-Canada et al.*, Board File No. 2021-96-U decision issued October 17, 1996. See also: *Domglas Ltd.*, [1976] OLRB Rep. Oct. 569; affirmed by the Divisional Court (1978) 19 O.R. (2d) 353 where the Board reached the same result in respect of a work stoppage to protest federal wage controls.) *The Board has ruled that "political protest strikes" are still "strikes", and if they occur during the term of a collective agreement, they are unlawful.*

6. In the case at hand, the TTC alleges that the three individual respondents, and the organizations with which they are connected, have breached section 83 of the Act. In an earlier oral ruling, the Board dismissed the application insofar as the Ontario Federation of Labour, CUPE, and the Labour Council were concerned, as the Board concluded that only “persons” are capable of breaching section 83 of the Act. The remaining part of the application asks that declarations issue against the individually named responding parties, Mr. Wilson, Mr. Ryan and Ms. Torney, declaring that they have breached section 83 of the Act. The TTC also seeks as remedies an order from this Board directing that the respondents cease and desist from causing or encouraging persons to picket premises and workplaces of the applicant on October 24, 25 and 26, 1996, an order that they be required to provide notice to or to instruct all participants in the “Days of Protest” to refrain from picketing at TTC sites, and orders prohibiting picketing within 30 metres of any vehicle entrances, exits, or driveways of any TTC property, prohibiting picketing within 300 metres of any TTC carhouse, garage or divisions as specifically listed, and an order prohibiting picketing at any subway station from 6:00 p.m. this evening, Thursday, October 24, 1996 until 6:30 a.m. tomorrow, Friday, October 25, 1996 and then from 12:01 a.m. Saturday, October 26, 1996 to 6:30 a.m. on that day. The TTC also asks for an order that all the Board’s orders be binding upon anyone having notice or knowledge of such orders. Finally, the TTC asks that the respondents be made to pay any costs or damages as are subsequently determined by the Board that result from their unlawful conduct. With respect to this latter point, the parties have agreed that the Board remain seized with respect to any and all issues dealing with the request for damages.

7. We turn first to section 83 of the Act. The responding parties argue that the conduct complained of here, statements or communications engaged in by the three respondents, does not fall within the ambit of section 83, and that section 83 does not deal with the activity of “talking” or “speaking”. With respect, we do not agree. Where section 83 refers to any “act”, in our view this encompasses acts such as occurred in the matter before us. Just as picketers who carrying picket signs with messages written upon them would fall within the ambit of the provisions of section 83 of the Act, so too do individuals who make their statements verbally.

8. Section 83 also raises Charter issues, and the Board recently dealt with a challenge to section 83 based upon the Charter. In *General Motors of Canada Limited*, [1996] OLRB Rep. May/June 409, the Board concluded that protest activity, of the sort that protesters are likely to engage in here at TTC sites, constitutes freedom of expression as protected by the Charter. The activity in question here also likely involves freedom of assembly. The Board there also concluded that even though Charter Rights were at issue, and even though section 83, amongst other sections of the Act, would restrict the exercise of such rights, such restrictions were demonstrably justified under section 1 of the Charter. We agree with and adopt the views expressed in that decision in this respect.

9. We are therefore satisfied that the provisions of section 83 apply to the circumstances at hand, and that those provisions do not breach the Charter. The question is whether any of the three responding parties have breached section 83. Turning to the evidence, we are satisfied that Mr. Wilson and Mr. Ryan have each made statements which were intended to have the effect of causing protesters to picket TTC sites, and which in turn were intended to have the effect of preventing TTC employees from working and thereby closing down the TTC. The Board is satisfied that ATU Local 113 members are unlikely to cross any such picket lines, and that it would be an unlawful strike for the members of ATU Local 113 to decline to do so. Local 113 has taken the position that if there are no picket lines at TTC sites, its members will in fact attend and work.

10. The responding parties argue, amongst other matters, that notwithstanding these statements by Mr. Wilson and Mr. Ryan, there was no causal connection between the statements and the unlawful strike that might result. While there may be many reasons why protesters will likely target TTC sites, in an effort to prevent the TTC from operating, the Board is satisfied that the positions of leadership of

Mr. Wilson and Mr. Ryan and the statements they have made, would have played a meaningful role in any protest that occurs there. The Board therefore concludes that, because of their acts, as a probable and reasonable consequence thereof the members of Local 113 of the ATU will engage in an unlawful strike during the "Days of Protest".

11. In contrast, on the evidence Ms. Torney has not made any such statements, and has not done anything at all unlawful.

12. In the result, the Board is satisfied that Mr. Wilson and Mr. Ryan have breached section 83 of the Act and we hereby so declare. However, the application is dismissed as against Ms. Torney.

13. That of course is not the end of the matter, as the question remains of what are the appropriate remedies that the Board should issue, beyond the declarations themselves. In determining the appropriate remedies, there are two critical points that must be remembered: first, it is worth considering the Board's jurisdiction in this area and second, Charter Rights are involved.

14. Turning to the first point, the Board does not have a general jurisdiction over picketing; rather, it deals, in circumstances such as those at hand, with questions of unlawful strikes or unlawful picketing, where the individuals on strike or who are likely to strike are not legally entitled to do so. If the strike itself is lawful, then the Board does not deal with particular picket line activity, and whether it might be unlawful. That jurisdiction is the courts'.

15. This Board is concerned with whether the rights and obligations under the *Labour Relations Act, 1995* are honoured, and with labour relations issues, and this Board has no jurisdiction to deal with matters unrelated to such matters.

16. Here, the problem that is raised by the TTC revolves around concern that the employees of the TTC will not cross any picket lines, and this would be an unlawful strike. The TTC wants orders to enable the TTC to ensure, to the extent possible, that its employees will in fact attend at work, as required. The TTC is not seeking orders against its employees, but rather seeks orders to eliminate any picket line that it asserts, and we have found, will likely cause its employees not to work.

17. Any remedies should address and be tailored to preventing this unlawful strike. Here, what is likely to cause any unlawful strike is the picketing of TTC sites, and therefore any remedies should be addressed to eliminating or precluding pickets at TTC sites, so that the employees will not have to cross those lines, and are therefore able to work.

18. It is important to understand what the Board is not dealing with in this application, and that is the question of whether the TTC can conduct its operations without interference from the protests. What best illustrates what the Board is and is not dealing with is the remedy sought by the TTC with respect to picketing activity at or outside its subway stations. The TTC asks only that no picketing occur prior to 6:30 a.m. on each day, because by that time its collectors will have been able to enter the stations. After 6:30 a.m., the TTC does not request that we issue any order. The remedy sought by the TTC in this respect reflects the jurisdiction and concern of this Board, that no unlawful strike occur. Except as is necessary or incidental to this issue, this Board does not deal with ensuring that the TTC can fully operate. Indeed, had the TTC sought a prohibition against picketing outside subway stations at any time during the day or night, the Board would not grant it, because there is nothing before us to indicate that such a remedy is necessary to ensure that employees do not have to cross picket lines.

19. The second point worth making is to re-emphasize that significant Charter Rights are at issue in the circumstances. Even though the Board is satisfied that there must be some limits placed upon the rights of people to express themselves and to assemble, in order to ensure that no unlawful

strike occurs, any limitation should be as narrow as possible, reflecting the significant and critical rights at issue. We are not dealing here with a typical employer-employee dispute, nor indeed, with a typical labour relations dispute. The provisions of section 83 do apply of course and have been breached, but any remedial response should restrict freedom of expression or freedom of assembly as little as possible in the circumstances. Just as the Board did in *Sarnia Construction Association*, [1982] OLRB Rep. June 922, where as a remedial response the Board established two gates around a construction site, one for striking employees and one for all other employees, similarly the Board should look here to establishing a remedial response that goes no further than is necessary to ensure that no unlawful strike occurs.

20. With these comments, we turn to the remedies. We have already declared that Mr. Wilson and Mr. Ryan have breached section 83 of the Act.

21. We also hereby direct that Mr. Wilson and Mr. Ryan cease and desist from causing or encouraging persons to picket any premises or workplaces of the TTC on October 24, 25 and 26, 1996, to the extent such picketing is restricted as follows.

22. With respect to particular restrictions on picketing activity, we have noted above already the particular restrictions sought by the TTC, that there be no picketing within 30 metres of any vehicle entrances, exits or driveways, within 300 metres of any carhouse, garage or division, and prior to 6:30 a.m. on each day at each subway station. The restrictions on picketing present an extremely difficult problem for the Board. As noted, significant Charter rights are at issue, and this is an extraordinary protest not at all typical of labour relations disputes. The Board is trying to balance the need to prohibit the unlawful activity, in an appropriate fashion, while preserving the rights of people in this Province to engage in Charter protected activity.

23. A significant difficulty in arriving at the appropriate balance in this respect is the lack of information before the Board which would enable the Board to draw such balances in practical terms. In this respect, we note that we have no evidence (nor indeed any pleaded facts) which advise the Board of the nature of the particular TTC premises where picketing is sought to be prohibited. We have no evidence of when employees are scheduled to arrive for work at particular sites, nor of the manner in which they work, their shifts, or how many employees are involved and so on. The Board is loathe to make orders generally restricting picketing without such information, again because we are to restrict picketing only to the extent necessary to ensure that employees don't have to cross picket lines.

24. Since we do not have evidence justifying a need to prohibit picketing 300 metres or even 30 metres from TTC sites, we will not impose such a direction.

25. Rather, we hereby order that at each TTC site, as identified in paragraphs 1 and 2 of the amended restrictions on picketing requested by the TTC, the TTC is to identify necessary access points or areas, whether they be a door, driveway, gate or whatever, to ensure that employees have unimpeded access to the work site or workplace as is necessary. Picketing is hereby prohibited in or around those access points or areas if it will interfere in any way with employees access to work or ability to work.

26. The Board suggests no minimum number of metres of "picket free" space, except to note that any such area or space should be no larger than is necessary to ensure that employees do not have to cross lines in order to work. The actual details will of course depend on the particular context. If one access point is sufficient in a location, to enable employees to work without crossing a picket line, then picketing is to be restricted only at that one point or area.

27. Within any "picket free" access point or area, access by employees to the workplace, or their ability to work, is not to be impeded in any manner.

28. And, for example, where bus drivers must be able to drive their vehicles in and out of terminals, in order to work, picketing is hereby prohibited in any manner from impeding such access and egress.

29. With respect to the subway stations, the TTC has asked that no picketing take place from Thursday 6:00 p.m. until Friday at 6:30 a.m., and from Saturday 12:01 a.m. until 6:30 a.m., during which times the TTC asserts it can arrange for its employees to enter the various stations. Similar to our other orders, no picketing is to take place at subway stations for whatever portion of the periods from 6:00 p.m. today to 6:30 a.m. tomorrow, and between 12:01 a.m. and 6:30 a.m. on Saturday during which employees would have to enter stations in order to work.

30. No doubt, the parties may wish to further discuss these restrictions.

31. Our orders are made binding upon the parties and anyone who has notice of or who is made aware of them.

32. The final matter is the request that Mr. Wilson and Mr. Ryan be required to instruct all participants in the "Days of Protest" to refrain from picketing. In this respect we make no such direction, but we do hereby direct that Mr. Wilson and Mr. Ryan *advise* participants in the "Days of Protest" scheduled for October 24, 25 and 26, 1996 of the declarations and directions that the Board has made herein.

33. This matter is adjourned on the basis discussed above.

34. Mr. Patterson's dissent will follow.

DECISION OF BOARD MEMBER D. A. PATTERSON; December 19, 1996

1. What follows are reasons for the dissent I provided orally on October 24, 1996.

2. With the exception of the finding that Linda Torney did not violate the Act, I dissent from the majority decision.

3. As a general matter, I do not believe that section 83 of the *Labour Relations Act* should be used, as it was here, as an instrument to regulate the general public's right to demonstrate.

4. The Metro Days of Action were part of a series of peaceful protests organized by broadly based, diverse social groups, and participated in both by members of these groups and by individual citizens. The Days of Action had its roots in the Ontario Federation of Labour convention in November 1995, where the delegates gave the leadership a mandate to form a coalition with other social justice groups for the purpose of educating the public about the government's policies and their impact on society, and to organize and mobilize the public around those issues. The Days of Action were political acts; they were not labour relations disputes. In bringing this application, the TTC has engaged the Board in an exercise that is far beyond the scope of its jurisdiction. The purposes of the *Labour Relations Act* include objectives such as "to facilitate collective bargaining", "to promote flexibility, productivity and employee involvement in the workplace", and "to encourage communication between employers and employees in the workplace". In other words, the goal of the Act is to regulate collective bargaining relationships. It is not intended to be used as a weapon to undermine popular political protest.

5. It is not surprising that the TTC was targeted as a site for people to protest the government's policies. The provincial government has cut its grants to the TTC 21% over a two year period. The

results of these cut-backs is severe and affects thousands and thousands of people: the Eglinton subway line have been scrapped, costing 34,000 direct jobs and allowing the continuation of gridlock on the roads and the associated expense and inconvenience associated with commuting by automobile; cut-backs in WheelTrans service, which for many of its users is a vital link to the outside world, dramatically impacts on users' ability to participate in society (especially when imposed in conjunction with the government's 22% cut in disability financial assistance). The intervenor, a WheelTrans user whose objections to the cuts had gone unheeded up to now, merely wished to vocalize her concerns about the cut-backs to the broader public.

6. The TTC's application is an attempt to insulate itself from the impact of a political protest and, in so doing, invoke the powers of the Board to suppress the rights of Ontarians to freedom of speech, expression, and assembly. In my view, the Board should not have been so anxious to take on this role. Because this application is fundamentally political in nature, rather than relating to a labour relations problem, I would have declined to entertain it or to issue a remedy.

7. The majority held that Messrs. Wilson and Ryan violated section 83 of the Act. Without any authority or precedent to support it, the majority ruled that *words* could form the basis of a breach of s.83. I disagree. Section 83(1) provides as follows:

No person shall do any *act* if the person knows or ought to know that, as a probable and reasonable consequence of the *act*, another person or persons will engage in an unlawful strike or an unlawful lock-out. (emphasis added)

By contrast, section 81 (which was not alleged to have been violated) provides as follows:

No trade union or council of trade unions shall *call or authorize or threaten to call* or authorize an unlawful strike and no officer or agent of a trade union or council of trade unions shall *counsel, procure, support or encourage* an unlawful strike or threaten an unlawful strike. (emphasis added)

8. Section 81 can be violated if a union "calls", "authorizes", "threatens", "counsels", "procures", "supports", or "encourages" an unlawful strike. It is obvious that words can form the basis of a breach of section 81. In contrast, section 83 can only be breached by certain "act[s]". If the Legislature intended to proscribe words in section 83, it could have and would have used terms similar to those used in section 81. It did not. Given this statutory language, I believe the majority should not have strained the regular meaning of "act" to encompass words. This is particularly so given the importance of the competing Charter rights of freedom of expression and assembly -- rights that are at the very heart of a democracy. As the Supreme Court of Canada noted in *RWDSU v. Dolphin Delivery* ((1986) 2 S.C.R. 573),

"Freedom of expression is not, however, a creature of the Charter. It is one of the fundamental concepts that has formed the basis for the historical development of the political, social and educational institutions of western society. Representative democracy, as we know it today, which is in great part the product of free expression and discussion of varying ideas, depends upon its maintenance and protection."

When important Charter rights are at issue, I believe it is more appropriate to interpret any ambiguity (which in any event I do not believe is present here) in favour of protecting the right.

9. Accordingly, I would have found that any statements made by Messrs. Wilson and Ryan in relation to the Days of Action could not form the basis for a violation of section 83 and I would have dismissed the application on that ground.

10. To interpret section 83 as regulate words is not only wrong, but unworkable. In order to prove a section 83 violation based on words the Board, in addition to satisfying itself that the union

members would not cross a picket line set up by the protesters, would have to be satisfied that the people picketing at the TTC were there *because* of Messrs. Wilson and Ryan's comments. It is far from clear exactly how that could be established. In the complex political context in which these events took place, it is simply unrealistic to ascribe causality in this way. Indeed, it may well be argued that the policies of the Ontario Government were the "cause" of the picketing. Or perhaps it was because of something done or said by any one of the over 20 other community, student, teacher, health care, child care worker, disabled, disadvantaged, professional workers, etc. groups involved in organizing the Days of Action (a fact that leads me to speculate as to why these particular responding parties were singled out by the TTC).

11. This problem of determining causality is compounded given that the application was filed and heard before any of the impugned acts of picketing were committed. In my view, these difficulties only underscore the inappropriateness of utilizing section 83 in this political context and of interpreting section 83 as to apply to speech. Indeed, the majority appears to have faced the same problem as it, in paragraph 9, bases its finding of a violation of s.83 not on causality, but exclusively on a finding of an *intention* on the part of Messrs. Wilson and Ryan to close down the TTC, a finding that is without question insufficient to establish a breach.

12. I also disagree with the majority's unconditional adoption of the Board's holding in *General Motors* that section 83's restriction on Charter rights is demonstrably justifiable under section 1 of the Charter. The situation here is entirely different from the situation in *General Motors*. In *General Motors*, which took place in the context of an earlier Day of Action, the employer filed an application in response to an *actual work stoppage by its employees*. The employer asserted that the work stoppage constituted an unlawful strike. The union's contention, which was rejected by the Board, was that the political nature of the work stoppage meant that it was not a strike or, in the alternative, that the work stoppage was an exercise of the employees' freedom of expression and that any provision in the Act that prevents it is an infringement on the workers' Charter rights.

13. The Supreme Court of Canada has stated repeatedly, and the Board itself noted in *General Motors*, that a section 1 analysis is a balancing task that requires the decision-maker to place the conflicting values *in their factual context*. The issue in *General Motors* was the constitutionality of the restrictions on work stoppages during the term of a collective agreement, in the context of a dispute between the parties to the collective bargaining relationship. Here, the issue is of the constitutionality of restrictions on speech, in the context of an employer and two individuals with no connection to the workplace. By adopting the *General Motors* conclusion without considering the specific context, facts, parties, issues and competing values of this case, the majority failed to perform the section 1 analysis it was required to do.

14. This case deals with restrictions on the fundamental value of freedom of expression, directed at individuals who are not party to the collective bargaining relationship. This last characteristic sets this case apart from *General Motors* (as well as *Dolphin Delivery*, which was relied heavily upon by the applicant). Given these critical differences, I think there is considerable merit to the responding parties' argument that section 1 of the Charter does not "save" the infringement on freedom of expression in this case.

15. Finally, I disagree with the nature of the remedy granted by the majority, in particular, the direction that the *applicant* determine the specific locations at which picketing will be prohibited. When performing a section 1 analysis, the *decision-maker* is to decide whether an acceptable balance of competing interests has been struck, and in particular, whether constitutional rights are restricted to the least extent possible. To "contract out" this task to the TTC, as the majority has done, is to say the least inappropriate, and means that the majority did not complete its section 1 determination.

1465-95-JD Ontario Public Service Employees Union, Applicant v. Trenton Memorial Hospital, Responding Party v. Ontario Nurses' Association, Service Employees' Union, Local 183, Intervenors

Jurisdictional Dispute - OPSEU complaining that hospital employer had improperly reassigned work related to performance of various respiratory and cardiac tests, treatments and associated tasks to employees represented by ONA and SEIU - Board not persuaded to overturn assignment in light of fact that Hospital's assignment was made for bona fide reasons and in absence of any contractual provision preventing Hospital from making the reassignment - Application by OPSEU dismissed

BEFORE: *Roman Stoykewych*, Vice-Chair, and Board Members *S. C. Laing* and *C. McDonald*.

APPEARANCES: *David Wright, Ed Holmes, Roger Haley, Jill Morgan, Marlene Wolters* and *Fran Stickle* for the applicant; *Robert Hickman, Peter O'Brien, Michael Murphy, Susan White, Judy Running* and *Linda Mitchell* for Trenton Memorial Hospital; *Caroline Cohen, Elizabeth Dewar* and *Bernice MacCormack* for the Ontario Nurses' Association; *Linda Thayer* and *Harma Badgley* for the Service Employees Union, Local 183.

DECISION OF THE BOARD; October 2, 1996

1. This is a dispute relating to a work assignment filed pursuant to the provisions of what is now section 99 of the *Labour Relations Act, 1995*. The applicant Ontario Public Service Employees Union ("OPSEU") complains that the employer Hospital has improperly reassignment work related to the performance of various respiratory and cardiac tests, treatments and associated tasks. This work was formerly performed by employees represented by OPSEU, and has now been assigned to employees represented by the Ontario Nurses' Association ("ONA") and the Service Employees' International Union ("SEIU") is improper.

2. The applicant requests that the Board make an assignment direction with respect to the work in question so as to require employees represented by it to continue to perform the work. The employer resists any such direction, maintaining that the assignment was appropriate. Both ONA and the SEIU filed intervention materials and otherwise participated in all aspects of the Board's proceedings relating to this application. They maintained, with OPSEU, that the "status quo" prior to the events giving rise to this application is the appropriate work assignment.

3. The Board held a consultation with the parties during which the parties developed and submitted a substantial document setting out their respective positions on the various matters in issue as well as outlining the areas of agreement and disagreement on facts in relation to this application. The Board then entertained the parties' oral submissions. Upon our review of the parties' statement of fact, their oral submissions, as well as the voluminous materials filed in support of this application, the Board is satisfied that the application may be appropriately disposed of and determined on the basis of the materials presently before the Board and without the calling of oral evidence or the making of further submissions.

4. As noted above, the work in question consists of the performance of various respiratory and cardiac tests, treatments and associated tasks. Prior to the reassignment, the work in question constituted the job functions performed by seven part-time Cardio-Pulmonary Technicians, represented by OPSEU, working out of the Hospital's Respiratory Therapy Department. The respiratory services that have been reassigned include:

1. the provision of ventilator support;
2. the administration of wet nebulization;
3. the setting up of oxygen tents and the provision of oxygen at bedside;
4. the administration of certain forms of pulmonary function tests.

5. The cardiology functions that have been transferred consist primarily of the the administration of ECG's to inpatients.

6. In conjunction with their direct testing and therapeutic functions, the Cardio-Pulmonary Technicians also performed work related to the stocking, cleaning and storing of the equipment used in the course of respiratory therapy and testing. It appears that this latter function was ancillary to testing and therapeutic functions, and constituted a relatively small proportion of the overall work in question.

7. With the reassignment of the work, the testing and treatment tasks have been transferred to Registered Nurses represented by the Ontario Nurses Association. The exception to this transfer is outpatient and booked inpatient ECG testing, which has been transferred to a cardio therapist, who is represented by OPSEU. The stocking, cleaning and storage aspects of the work in question have been transferred in their entirety to employees represented by the SEIU. As a result of the reassignment of work, the seven part-time Cardio-Pulmonary Technicians' job functions have been eliminated and they have been provided notices of layoff.

8. Prior to the employer's transfer of the respiratory and cardio testing and treatment work, these functions were performed at the Hospital by Registered Nurses during those hours when Cardio-Pulmonary Technicians were not present in the Hospital or were otherwise unavailable. To similar effect, stocking, cleaning and storage functions relating to other hospital materiel was performed by the members of the SEIU operating out of the Hospital's Central Storage Room and it appears from the materials filed with the Board that the performance of such work by technicians was something of an anomaly in terms of the Hospital's overall operations.

9. Until the events giving rise to the complaint, the employment relationship of the Cardio-Pulmonary Technicians was governed by the provisions of the collective agreement between the Hospital and OPSEU. The collective agreement relates to a "standard paramedical unit" for both full-time and part-time employees. As is normally the case in unit descriptions of this sort, the scope clause (Article 2.01) is clarified by a note setting out the various paramedical positions currently employed by the Hospital. Although no specific reference is made to Cardio-Pulmonary Technicians in the "clarity note", there was no dispute that these terms and conditions of their employment were covered by the provisions of the agreement. It is clear that this arrangement has been in place for many years, spanning a number of collective agreements between the parties. The Hospital had concluded collective agreements with ONA and SEIU in relation to units of Registered Nurses and non-technical, non-professional personnel, respectively. Both collective bargaining relationships are also of considerable duration.

10. While the OPSEU collective agreement, as noted, covers work when performed by Cardio-Pulmonary Technicians, it is nevertheless clear that it does not compel the employer to assign such work exclusively to its employees covered by the agreement. The collective agreement between the Hospital and OPSEU features significant "job protection" provisions relating to the contracting out of work performed by employees under the collective agreement (Art. 28.04) and to the transfer of work to supervisors or managers (Art. 28.05). There is nonetheless no specific provision in the agreement

relating to the transfer of work to employees in other bargaining units. No grievance had been filed by OPSEU with respect to the employer's action, and its counsel stated that none was planned.

11. To similar effect, while the language of the collective agreement between ONA and the Hospital may well preclude the Hospital from transferring certain work performed by Registered Nurses out of that bargaining unit, there was no suggestion that the collective agreements of either ONA or the SEIU compel the assignment of the work in question to the employees represented by them.

12. The Hospital's stated rationale for the reassignment of the work was that the provision of the testing and treatment functions by Registered Nurses at bedside would produce both increases in the efficiency and improvements in the quality of nursing care. Considerable material was submitted in support of that position, including materials related to its Functional Programme, a recent external review of the respiratory therapy department, professional literature, and various other documents. The general thrust of the Hospital's position was that the functions in question could be performed more efficiently and with an improvement in patient care were the direct caregivers to perform them in an uninterrupted fashion during the course of the provision of other care. Prior to the reorganization, a nurse would administer a wide range of tests and treatments, but in the instance of the tests in question, would be required to call a Cardio-Pulmonary Technician. This would necessarily entail an interruption of treatment or, in some circumstances, a transportation of the patient. Under the "point of care" system put in place by the Hospital, a patient's care would be administered in an uninterrupted manner by transferring the work to the nurses and (through the implementation of relatively minor changes to the instrumentation), by permitting the work to be performed at bedside.

13. Its decision to transfer the work to Registered Nurses, the Hospital stressed, was not a case of allowing one union to "buy jurisdiction" at the expense of another on the basis of differential wage rates since it is apparent that the hourly rates for Registered Nurses are substantially higher than those of the Cardio-Pulmonary Technicians. Rather, the employer claims, the savings would be achieved by eliminating the "down time" inherent in the delivery of the services in question by means of a separate department. In this respect, the Employer asserted that the overall use of the respiratory therapy department had shown a significant decline in recent years. It estimated that only a limited increase in the nursing complement was necessary to absorb the shift of job functions.

14. While counsel for OPSEU took issue with a number of the conclusions relied upon by the employer to support its position, the thrust of its argument was that the assignment of the work in question was disruptive of the system of collective bargaining relationships that had been established for many years at the workplace. It was recognized, of course, that the contractual relationship between the Hospital and OPSEU did not expressly prohibit such a transfer. Nevertheless, it was argued that the retention of the stability of existing bargaining relationships and the work assignments flowing from them is a labour relations value of considerable significance and, thus, a factor to which the Board should give substantial weight in the course of a work assignment determination. Placing considerable emphasis upon the Board's decision in *Silverwood Dairies Limited* [1981] OLRB Rep. Nov. 1624, counsel stressed that these values should be considered as predominant whether or not they are based on contractual language enforceable at arbitration, and irrespective of their taking place outside the construction industry.

15. The parties also made submissions framed in terms of the list of factors normally considered by the Board in work assignment cases, and which had been developed in the context of "jurisdictional disputes" arising for the most part in the construction industry or in relation to disputes between the crafts. This panel of the Board found the majority of these criteria to be either of dubious applicability to the resolution of a dispute in the present context, yielding equivocal results, or both, such that a

review of these indicia would serve little purpose. It is sufficient to note that we are not persuaded that the employees represented by either union are better suited to perform the work in question. While it may be that a Registered Nurse would usefully bring her or his professional training and experience to bear in the performance of the operations, the fact of the matter is that the employees represented by OPSEU have been performing this function for many years, and there is no suggestion in the materials that the work has been performed in anything but a satisfactory manner. Conversely, although the employees to whom the work has been transferred have been required to familiarize themselves with the equipment and procedures entailed in the work in question, there is nothing in the materials to suggest that they would require the acquisition of a substantially new set of skills to perform the work safely and efficiently.

16. Instead, the Board has found the employer's preference, based as it is upon a demonstrated operational business rationale, and nature of the contractual relations between the parties, which do not compel the employer to assign the work in question to employees represented by OPSEU, to be the two factors of greatest significance in determining this matter. The Hospital's materials demonstrate a careful consideration of its service-provision functions in relation to respiratory and cardiac care, and the course of action it has embarked upon is, at the very least, consistent with the results of such a review. The employer states that the transfer of the work is conducive to producing a result that is both more efficient from a cost perspective and more effective in terms of care to patients. While the submissions of OPSEU substantially question whether these desired objectives would be achieved (and, the Board notes, the objections raised are not mere quibbles), there is nevertheless no suggestion that the employer's decision is anything but a *bona fide* initiative on its part. It is noteworthy, in this respect, that the transfer of work entails the engagement of unionized personnel to perform this work at what is, for the most part, a higher wage rate.

17. Furthermore, it is a matter of considerable significance to the Board that the action taken by the Hospital appears to fall within the scope of the managerial prerogative contemplated in its collective agreement with OPSEU. In particular, and unlike the collective agreement between the Hospital and ONA, there is no contractual prohibition to the transfer of work previously performed by members of the OPSEU bargaining unit to other employees of the Hospital. Under such circumstances, the applicant's request to have the employer's actions declared improper is, in effect, a request that the Board disturb the contractual dynamic established between the various parties in the processes of collective bargaining and/or interest arbitration.

18. It is with this consideration in mind, moreover, that the applicant's primary submission - which we take to be an appeal to the collective bargaining *status quo* - appears to be equivocal at best: although the employer had for many years assigned such work to employees represented by OPSEU, there is no dispute that throughout this period and subject to the previously mentioned job security provisions in the collective agreement it retained the power to assign it elsewhere. In this respect, it is important to appreciate the collective bargaining context in which this dispute arises. The disputed work assignment is not the product of a mark up meeting in the construction industry. In that latter context, for a variety of historical reasons, centred largely around the craft organization of the construction industry, collective agreements routinely make overlapping claims to a specific kind of work. For that reason, the parties' ability to rely upon the stability of bargaining relationships has been recognized as a value of considerable significance. (*Ontario Hydro*, [1992] OLRB Rep. Aug. 915.) In the present circumstances, by contrast, the contractual claims to work do not conflict. Indeed, the recognition provision of the OPSEU agreement as is usually the case outside the craft context makes representational claims with respect to groups of employees and not to work. More generally, the parties' relationship is established in a collective bargaining process conducted in the midst of an arbitral consensus that restrictions upon the employer's work assignments must be founded in express provisions of collective agreements. (Re: *USWA and Russelsteel Ltd.*, (1966), 17 LAC 253) (Arthurs)). In

light of this, the Board is not prepared to place the precedence upon the labour relations values inherent in "past practice" urged upon us by counsel for the trade union.

19. Moreover, we do not accept that the *Silverwood Dairies* decision assists the applicant in this respect. While the Board in that case relied heavily upon the employer's past practise to find the departure from the work assignment *status quo* to be improper, it is important to note that its decision was premised upon a finding of a conflict between collective agreements. Furthermore, the Board's reliance upon past practise was expressly predicated on the "absence of cogent evidence of a reasonable and substantial need to change [the] assignment". As has been discussed, neither of those conditions obtain in the present circumstances.

20. Accordingly, in light of the Hospital's decision to assign work made, as described above, for *bona fide* reasons, and in the absence of any contractual provision preventing it from doing so, the Board is not satisfied that there are sufficient labour relations reasons to overturn the Hospital's work assignment notwithstanding that such assignment constitutes a departure from the employer's previous practice.

21. The application is therefore dismissed.

COURT PROCEEDINGS

2016-93-G (Court File No. 292/95) Duffy Mechanical Contractors Limited and Dura-systems Barriers Inc., Applicants v. Sheet Metal Workers' International Association, Local 30 and The Ontario Labour Relations Board, Respondents

Construction Industry - Construction Industry Grievance - Employee - Judicial Review - Board finding off-site fabrication shop employees to be employees in the construction industry and holding that, when engaged in fabrication of ductwork destined for ICI job site, their work is covered by ICI agreement - Application for judicial review dismissed by Divisional Court

Board decision reported at [1995] OLRB Rep. Jan. 14.

Ontario Court of Justice (Divisional Court), Hartt, Southey, and Watt, JJ., September 11, 1996.

Southey J. (endorsement): Having regard to the extended definition of "employee" in s.119 of the Labour Relations Act relating to the Construction Industry, and to the earlier decision of the Board under s.1(4) of the Act that Duffy and Dura should be treated as one employer, we are satisfied that the Board's determination that the employees of Dura were construction employees when engaged in the fabrication of duct work destined for an ICI job site was not patently unreasonable. Despite the ingenious argument of Mr. Contini, there is no relevant and material difference between the issue thus determined and that stated in para. 3 of the Board's reasons. The application is dismissed with costs, hereby fixed at \$2,500.

1517-94-OH (Court File No. 103/96) Lyndhurst Hospital, Applicant v. Pauline Au and the Ontario Labour Relations Board Respondents

Discharge - Evidence - Health and Safety - Judicial Review - Practice and Procedure - Applicant alleging violation of Occupational Health and Safety Act on basis of discharge described as reprisal for complaint of sexual harassment in workplace - Board declining to dismiss application without a hearing for want of *prima facie* case - Employer's application for judicial review dismissed as premature by Divisional Court

Board decision reported at [1995] OLRB Rep. Nov. 1371 and at [1996] OLRB Rep. May/June 456.

Ontario Court of Justice (Divisional Court), Smith A.C.J.O.C., Watt, Corbett, JJ., September 4, 1996.

H.J. Smith A.C.J.O.C. (endorsement): In our respectful view, the manner in which the OLRB has dealt with the preliminary motion made to it by the Applicant under its Rule 24 does not give rise to the remedy sought. This application for judicial review is dismissed as premature.

This is not in our view a case for costs.

1926-94-R; 1927-94-R; 1928-94-R (Court File No. 730/95) Carl Rotman, Noah Rotman, 896896 Ontario Ltd. o/a Lakeshore Garage, Chris Chronopoulos, Peter's Taxi Limited, Sandra Mandronis, Matina Mandronis, Northland Taxi and Sahib Singh Ghai, Applicants v. The Ontario Labour Relations Board and Retail, Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America, Local 1688, Respondents

Adjournment - Judicial Review - Natural Justice - Reconsideration - Related Employer - Remedies - Board declaring that some 128 associates of three taxi brokers, together with each of their respective brokers, should be treated as one employer for purposes of the Act - Board making additional orders and directions in accordance with earlier agreement made between union, brokers and group of 47 associates setting up bargaining infrastructure and giving associates formal role in negotiating process - Divisional Court dismissing application for judicial review alleging that decision patently unreasonable and that applicants were denied natural justice

Board decision reported as *Diamond Taxicab Association (Toronto) Limited* at [1995] OLRB Rep. June 753.

Ontario Court of Justice (Divisional Court), Southey, Watt, Perras JJ., September 9, 1996.

Southey J. (Orally): The principal reasons for the Board's finding that the associates and the three brokers were under common control or direction are clearly stated in paragraphs 69 to 72 of the Board's decision on June 30, 1995. We are not persuaded that the decision was patently unreasonable.

Turning to the question of the alleged denial of natural justice, we are mindful of the well established principle that the Board is the master of its procedures. The issue is whether the applicants were treated fairly in the circumstances of this case.

The matter was one involving labour relations, in which delay might well prejudice the position of one or other of the interested parties. In our judgment, the procedure followed by the Board in refusing and adjournment in March of 1995, and ruling that it would proceed on the basis of will-say statements, was not unfair to the applicants in the circumstances of this case. There is really no suggestion that the material facts of the case were in dispute. The issues were ones of law, or as to the inferences to be drawn from undisputed facts. The applicant Rotman and the other applicants chose not to be represented when these issues could have been argued on April 24, 1995. In these circumstances, we think it is now too late to suggest that there had been a denial of the right to counsel.

We also consider that the point raised by Mr. Lebi regarding the failure of the applicants to request a reconsideration by the Board under s. 108(1) of the *Labour Relations Act*, is of considerable significance in this case in relation to the alleged denial of natural justice. The Board was given no opportunity to explain its position with respect to the point that is now raised.

For these reasons the application is dismissed with costs to the Union fixed at \$3,500.

3178-91-G (Court File No. 828/95) The Toronto-Dominion Bank, Applicant v. United Brotherhood of Carpenters and Joiners of America, Local 785 and the Ontario Labour Relations Board, Respondents

Abandonment - Bargaining Rights - Constitutional Law - Construction Industry - Construction Industry Grievance - Judicial Review - Board finding constitutional issue raised by employer to be *res judicata* - Fact that there was little contact between union and employer or its employees, or fact that grievances were not filed in all instances of violation of collective agreement (in absence of unambiguous evidence that union knew or reasonably ought to have known of those violations and did nothing) insufficient to warrant finding that union abandoned bargaining rights - Board finding that essential elements of estoppel established in relation to both conduct of local union filing grievance and the employee bargaining agency and other ABAs holding bargaining rights for employer's employees - Board deciding that notice bringing estoppel to an end coming with Board's decision - Board dismissing grievance but declaring that employer bound to recognize union's bargaining rights and bound to existing provincial agreement - Employer's application for judicial review dismissed by Divisional Court

Board Decision reported [1995] OLRB Rep. May 686.

Ontario Court (General Division) Divisional Court, O'Driscoll, Steele and Corbett JJ., October 22, 1996.

O'Driscoll J. (endorsement): This application is dismissed. The Applicant T.D. Bank seeks judicial review of the decision of the OLRB holding that the Union had not abandoned its bargaining rights with the T.D. Bank.

In paragraph 55 to paragraph 59 inclusive of the Reasons, the OLRB found that the evidence before it did not reach the necessary plateau to find "abandonment". The Board went on to hold that the evidence did justify a finding of *estoppel* to the date of its decision.

Mr. Morphy submitted that the OLRB's decision must be correct otherwise the Board had no jurisdiction. *Assuming* that is the bench mark, we find that it has been met.

The application is dismissed.

Costs are fixed at \$3,500.00 and payable by the T.D. Bank to the Union. The Board does not as for costs.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING AUGUST 1996

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

1784-95-R: Canadian Union of Operating Engineers and General Workers (Applicant) v. Burlington Golf and Country Club Limited (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of Burlington Golf & Country Club Limited in the City of Burlington, save and except Assistant Supervisors, persons above the rank of Assistant Supervisor, golf professionals, Head Chef, Second Chef, office and clerical staff" (87 employees in unit)

Bargaining Agents Certified Subsequent to Vote

3934-95-R: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. G. M. Finishers Ltd. (Respondent)

Unit: "all painters and painter apprentices in the employ of G. M. Finishers Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painter apprentices in the employ of G. M. Finishers Ltd. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (54 employees in unit)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	20
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	2

0280-96-R: International Brotherhood of Electrical Workers Construction Council of Ontario (Applicant) v. 956400 Ontario Inc., c.o.b. as M H Electric (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of 956400 Ontario Inc., c.o.b. as M H Electric in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of 956400 Ontario Inc., c.o.b. as M H Electric in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	2

0350-96-R: Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. 541907 Ontario Limited c.o.b. as Days Inn Toronto Downtown (Respondent) v. Hotel Employees Restaurant Employees Union, Local 75 of the Hotel Employees and Restaurant Employees International Union (Intervener)

Unit: "all employees of the Days Inn Toronto Downtown in the following classifications: Room Attendant, Houseman, Laundry, Laundry Washperson, Inspectress, Telephone Operators and General Maintenance, excluding supervisors and those above the rank of supervisor" (104 employees in unit)

Number of names of persons on revised voters' list	107
Number of persons listed as in dispute	0
Number of persons who cast ballots	82
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	80
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	50
Number of ballots marked in favour of intervener	30
Number of ballots segregated and not counted	2

0363-96-R: Communications, Energy & Paperworkers Union of Canada (CEP) (Applicant) v. 699184 Ontario Inc. c.o.b. as Sherwood Record Management Systems (Respondent)

Unit: "all employees of 699184 Ontario Inc. c.o.b. as Sherwood Record Management Systems in and out of the Regional Municipality of Niagara, save and except supervisors, persons above the rank of supervisor, office, clerical, sales staff and persons regularly employed for not more than 24 hours a week" (17 employees in unit)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	1

0378-96-R: Ontario Public Service Employees Union (Applicant) v. Integration Communautaire Cochrane Community Living (Respondent)

Unit: "all employees of Integration Communautaire Cochrane Community Living in the Town of Cochrane, save and except supervisors, persons above the rank of supervisor, administrative secretary, students hired through special programs funded by the provincial or federal government, and respite care workers" (23 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	4

1027-96-R: Industrial and Commercial Workers' Union (UNITE) (Applicant) v. All-Teck P.T.B. Inc. (Respondent)

Unit: "all employees of All-Teck P.T.B. Inc. in the City of Cornwall, save and except supervisors and persons above the rank of supervisors and clerical staff, and salespersons, and students" (48 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	48
Number of persons who cast ballots	44
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	44
Number of ballots marked in favour of applicant	30
Number of ballots marked against applicant	14

1049-96-R: Teamsters Local Union No. 419 (Applicant) v. Leon's Furniture Limited (Respondent)

Unit: "all employees of Leon's Furniture Limited at 1 Suntract Road, in the City of North York in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff and students employed during the school vacation period" (0 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	58
Number of persons who cast ballots	55
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	43
Number of segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	31
Number of ballots marked against applicant	12
Number of ballots segregated and not counted	12

1104-96-R: United Paperworkers International Union (Applicant) v. Major Machine Works Ltd. (Respondent)

Unit: "all employees of Major Machine Works Ltd. in Marathon, Ontario in the District of Thunder Bay employed as applicators in the industrial department of Major Machine Works Ltd." (2 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1116-96-R: Service Employees International Union Local 532 affiliated with S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Summit Halfway House Inc. (Respondent)

Unit: "all employees of Summit Half Way House Inc. in the Regional Municipality of Halton, save and except supervisors, persons above the rank of supervisor and office staff" (20 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	1

1117-96-R: Local Union 47 Sheet Metal Workers International Association (Applicant) v. Almonte Fire Trucks Ltd. (Respondent)

Unit: "all employees of Almonte Fire Trucks Ltd. at Carleton Place Ontario, in the County of Lanark, save and except foremen, persons above the rank of foreman, office and sales staff" (22 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	0

1126-96-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Canadian Union Wear Inc. (Respondent)

Unit: "all employees of Canadian Union-Wear Inc. employed in the Regional Municipality of Metropolitan Toronto, save and except managers and those above the rank of manager" (4 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1147-96-R: The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 527 (Applicant) v. Michael J. Freund c.o.b. as Sunrise Mechanical Services (Respondent)

Unit: "all journeymen and apprentice plumbers in the employ of Michael J. Freund c.o.b. as Sunrise Mechanical Services in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice plumbers in the employ of Michael J. Freund c.o.b. as Sunrise Mechanical Services in all sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), and the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

1157-96-R: United Food and Commercial Workers International Union Local 175 (Applicant) v. Devonshire Stone Lodge Inc. (Respondent)

Unit: "all employees of Devonshire Stone Lodge Inc. in the City of Guelph, save and except Manager, those above the rank of Manager, Food Service Supervisor, Director of Care and persons for whom any trade union held bargaining rights as of July 19, 1996" (10 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	1

1174-96-R: The Communications, Energy and Paperworkers Union of Canada (Applicant) v. G.H. Wood and Wyant Inc. (Respondent)

Unit: "all employees of G.H. Wood & Wyant Inc. at its Distribution Centre and Warehouse at 440 Passmore Avenue in the City of Scarborough, save and except office, clerical and sales staff, supervisors and persons above the rank of supervisor, and persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (14 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	2

1191-96-R: Christian Labour Association of Canada (Applicant) v. Deloitte and Touche Inc., in its capacity as court appointed receiver and manager of certain assets, property and undertakings of Brucefield Manor Limited, and not in its personal capacity (Respondent)

Unit: "all registered and graduate nurses employed in a nursing capacity by Deloitte & Touche Inc., in its capacity as court appointed receiver and manager of certain assets, property and undertakings of Brucefield Manor Limited, and not in its personal capacity at Mount Pleasant in the County of Brant, save and except Head Charge Nurse, office and clerical staff, Food Services Supervisor, Activity Director and persons for whom any trade union held bargaining rights as of July 24, 1996" (7 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

1194-96-R: Ontario Public Service Employees Union (Applicant) v. St. Joseph's Health Services Association of Chatham, Inc. operating as St. Joseph Hospital (Respondent)

Unit: "all paramedical and technical employees of the St. Joseph Health Services Association of Chatham Inc. in the City of Chatham, save and except supervisors, persons above the rank of supervisor, persons for whom any

trade union held bargaining rights as of July 23, 1996" (49 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	52
Number of persons who cast ballots	35
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	31
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	30
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	2

1199-96-R: Ontario Nurses' Association (Applicant) v. Devonshire Pine Grove Inc. (Respondent)

Unit: "all Registered and Graduate Nurses at Devonshire Pine Grove Inc. in the City of Woodbridge, save and except the Director of Care and any persons above the Director of Care" (13 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1204-96-R: Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. 1007289 Ontario Ltd. operating as Quality Suites by Journey's End - Carlingview (Respondent)

Unit: "all restaurant employees of 1007289 Ontario Limited, c.o.b. as Quality Suites by Journey's End located at 262 Carlingview Drive, Etobicoke, save and except supervisors, persons above the rank of supervisor, hostesses, office, clerical and purchasing staff, accounting staff and students employed during the school vacation period" (5 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots marked in favour of intervener	0

1211-96-R: Service Employees International Union, Local 204 Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Dewson Private Hospital Limited (Respondent)

Unit: "all employees of Dewson Private Hospital Limited in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor and office and clerical staff" (27 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	34
Number of persons who cast ballots	31

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	23
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	6

1230-96-R: United Steelworkers of America (Applicant) v. Oetker Ltd. (Respondent)

Unit: "all employees of Oetker Ltd. at 6920 Columbus Road, Mississauga, Ontario, save and except Warehouse Manager, Warehouse Supervisor, persons above the rank of Warehouse Supervisor, office and clerical staff, students employed during the school vacation period and persons regularly employed for not more than twenty-four hours per week" (11 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	12
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	1

1236-96-R: Christian Labour Association of Canada (Applicant) v. Univision Marketing Group Inc. (Respondent)

Unit: "all telefundraisers of Univision Marketing Group Inc. in the City of North York, save and except supervisors and persons above the rank of supervisor" (31 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	28
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	2

1246-96-R: International Brotherhood of Electrical Workers, Construction Council of Ontario (Applicant) v. S. Jamrik Electric Ltd. (Respondent)

Unit: "all journeymen and apprentice electricians and journeymen and apprentice linemen in the employ of S. Jamrik Electric Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice electricians and journeymen and apprentice linemen in the employ of S. Jamrik Electric Ltd. in all sectors of the construction industry in the County of Wellington, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	1

1296-96-R: Millwright District Council of Ontario and its Local 1410 (Applicant) v. Jones Power Company Ltd. (Respondent)

Unit: “all millwrights and millwrights’ apprentices in the employ of Jones Power Company Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all millwrights and millwrights’ apprentices in the employ of Jones Power Company Ltd. in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (11 employees in unit)

Number of names of persons on revised voters’ list	11
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	5
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0

1301-96-R: Teamsters Local Union 91 (Applicant) v. Palmar Inc. (Respondent)

Unit: “all employees of Palmar Inc. in the City of Ottawa, save and except supervisors, persons above the rank of supervisor, office and clerical staff” (8 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters’ list	8
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	7
Number of segregated ballots cast by persons whose names appear on voter’s list	0
Number of segregated ballots cast by persons whose names do not appear on voters’ list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

1327-96-R: Brewery, General and Professional Workers’ Union (Applicant) v. Med-Chem Laboratories Ltd., Medical Sciences Laboratories of Newmarket Ltd., and Med-Chem Health Care Services Inc. (Respondents)

Unit: “all employees of Med-Chem Laboratories Ltd., Medical Sciences Laboratories of Newmarket Ltd., and Med-Chem Health Care Services Inc. in the Municipality of Lindsay, save and except persons employed in a confidential capacity with respect to labour relations, section heads, supervisors and persons above the rank of section head or supervisor” (685 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters’ list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	4
Number of segregated ballots cast by persons whose names appear on voter’s list	0
Number of segregated ballots cast by persons whose names do not appear on voters’ list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

1348-96-R: The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 221 (Applicants) v. Jones Power Company Limited (Respondent)

Unit: “all plumbers, plumbers’ apprentices, steamfitters and steamfitters’ apprentices in the employ of Jones Power Company Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers’ apprentices, steamfitters and steamfitters’ apprentices in the employ of

Jones Power Company Limited in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (29 employees in unit)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of ballots marked in favour of applicant	20

1390-96-R: Canadian Union of Public Employees (Applicant) v. Scugog Memorial Public Library Board (Respondent)

Unit: "all employees of the Scugog Memorial Public Library Board in the Township of Scugog, save and except Chief Executive Officer and persons above the rank of Chief Executive Officer" (8 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots segregated and not counted	0

Applications for Certification Dismissed Subsequent to Vote

0010-95-R: International Union of Bricklayers and Allied Craftsmen Local 2, Ontario (Applicant) v. Columbia Masonry Contracting Inc. (Respondent) v. Bricklayers, Masons Independent Union of Canada, Local 1 (Intervener)

Unit: "all bricklayers, bricklayers' apprentices, stonemasons and stonemasons' apprentices in the employ of Columbia Masonry Contracting Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all bricklayers, bricklayers' apprentices, stonemasons and stonemasons' apprentices in the employ of the responding employer in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman," (7 employees in unit)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	16
Number of ballots marked in favour of intervener	16

1965-95-R: International Association of Bridge, Structural and Ornamental Iron Workers, Local 765 (Applicant) v. Ontario Iron Works Ltd. (Respondent)

Unit: "all iron workers and iron worker apprentices in the employ of Ontario Iron Works Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all iron workers and iron worker apprentices in the employ of Ontario Iron Works Ltd. in all other sectors in the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	14

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	0

3831-95-R: The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 463 (Applicants) v. Pinnacle Mechanical Group Limited (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Pinnacle Mechanical Group Limited and T. C. Shoniker Construction Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Pinnacle Mechanical Group Limited and T. C. Shoniker Construction Limited in all other sectors in the County of Peterborough (except for the geographic Township of Cavan), the County of Victoria (except for the geographic Township of Manvers) and the provisional County of Haliburton, save and except non- working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

0678-96-R: United Steelworkers of America (Applicant) v. National Grocers Co. Ltd., c.o.b. as C.C.G. Security Inc. (Respondent)

Unit: "all employees of National Grocers Co. Ltd., c.o.b. as C.C.G. Security Inc. in the Municipality of Metropolitan Toronto, save and except Supervisors, persons above the rank of Supervisor, Office and Clerical" (25 employees in unit)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	19
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	4

1018-96-R: United Steelworkers of America (Applicant) v. GSW Heating Products Company and/or GSW Inc. (Respondent)

Unit: "all employees of GSW Heating Products Company and/or GSW Inc. in the City of Stoney Creek, save and except supervisors and persons above the rank of supervisor and students employed during the school vacation period" (17 employees in unit)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	24
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	16
Number of ballots segregated and not counted	8

1212-96-R: Ontario Public Service Employees Union (Applicant) v. McMaster University (Respondent)

Unit: "all non academic employees of McMaster University employed in the Regional Municipality of Hamilton-Wentworth and staff of the Health Sciences North Centre in Thunder Bay, save and except supervisors and persons above the rank of supervisor, persons for whom any trade union held bargaining rights as of July 25, 1996, security guards, nurses, the University Librarian and Assistant and Professional Librarians, Registrars and Assistant Registrars, executive assistants to the President, Vice-Presidents, Directors and Deans, auditors, secretaries to the Senate and Board of Governors, the Employment Equity Co-ordinator, the Sexual Harassment Officer, human resources staff, hourly staff of the parking control office, temporary and casual staff, and employees of the following organizations and departments: Human Resources, Environmental Health and Safety, Innovus Inc., Canadian Baptist Archives, Chedoke-McMaster Hospitals, Graduate Students Association, McMaster Association of Part-time Students, McMaster Children's Centre, McMaster Divinity College, McMaster University Faculty Association, McMaster Staff Association, McMaster Student Union Inc. and Regional Medical Associates." (1359 employees in unit)

Number of names of persons on revised voters' list	1408
Number of persons who cast ballots	855
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	247
Number of ballots marked against applicant	435
Number of ballots segregated and not counted	172

1314-96-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Colonel John McCrea Memorial Branch #234 Royal Canadian Legion (Respondent)

Unit: "all employees of Colonel John McCrea Memorial Branch #234, Royal Canadian Legion, 919 York Road, Guelph, Ontario, save and except Manager, those above the rank of Manager and those employees working less than 24 hours per week" (5 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	2

1325-96-R: Brewery, General and Professional Workers' Union (Applicant) v. Med-Chem Laboratories Ltd., Medical Sciences Laboratories of Newmarket Ltd., and Med-Chem Health Care Services Inc. (Respondents)

Unit: "all employees of Med-Chem Laboratories Ltd., Medical Sciences Laboratories of Newmarket Ltd., and Med-Chem Health Care Services Inc. in the Municipality of Newmarket, save and except persons employed in a confidential capacity with respect to labour relations, section heads and persons above the rank of section head" (746 employees in unit)

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	2

Applications for Certification Withdrawn

0412-96-R: Office and Professional Employees International Union (Applicant) v. Hotel Employees Restaurant Employees Union, Local 75 (Respondent)

1312-96-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Milval Interiors (Respondent)

1403-96-R: International Union of Operating Engineers, Local 793 (Applicant) v. Coco Paving Inc. (Respondent)

FIRST AGREEMENT - DIRECTION

3047-95-FC: Labourers' International Union of North America, Local 1059 (Applicant) v. Old Oak Properties Inc. (Respondent) (*Granted*)

1103-96-FC: Ontario Public Service Employees Union (Applicant) v. Cerminara Boys' Residence Inc. (Respondent) (*Withdrawn*)

1239-96-FC: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Belfast Fruits Inc. c.o.b. as St. Laurent Fruits and Vegetables (Respondent) (*Terminated*)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

4596-94-R: International Union of Bricklayers and Allied Craftsmen, Local 7 (Applicant) v. 1957 Masonry Inc., Olivieri Masonry Ltd., Ottawa-Carleton Bricklaying and Masonry Limited, Dario Olivieri, Donna Olivieri and Concrete Developments Ltd. (Respondents) (*Withdrawn*)

2022-95-R: International Brotherhood of Painters and Allied Trades, Local 1824 (Applicant) v. Twin City Painting Limited, Brody Enterprises Inc. and Dennis McMahon, c.o.b. as McMahon Contracting (Respondents) (*Dismissed*)

3202-95-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Trans-Global Electric Inc. and Quail-Brooks & Associates Electrical Contractors Inc. (Respondents) (*Granted*)

4031-95-R: The Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 598 (Applicant) v. Vulcan Method Waterproofing & General Contracting Inc. and Vulcan Group Inc. (Respondents) (*Endorsed Settlement*)

0052-96-R: United Steelworkers of America (Applicant) v. Elgin Labour Centre Inc. and Elgin Labour Temple Association (Respondents) (*Endorsed Settlement*)

0328-96-R: United Steelworkers of America (Applicant) v. Lanark Furniture Corporation, Distinctive Designs Furniture Inc. (Respondents) v. Labourers' International Union of North America, Local 183 (Intervener) (*Dismissed*)

0725-96-R: Michelle Duncan, for a group of Employees (Applicant) v. The Hotel Employees Restaurant Employees International Union and The Hotel Employees Restaurant Employees International Union Local 75 (Respondents) v. Office and Professional Employees International Union (Intervener) (*Withdrawn*)

0919-96-R: Sheet Metal Workers' International Association, Local 47 (Applicant) v. 969195 Ontario Inc. c.o.b. Skoff Roofing, Ottawa Roof Riders Ltd., Richmond Roofing Limited (Respondents) (*Endorsed Settlement*)

1020-96-R: Iron Workers District Council of Ontario and International Association of Bridge, Structural and Ornamental Iron Workers, Local 786 (Applicant) v. Walter & SCI Construction (Canada) Limited, Pigott Contractors Inc., Fraser Brace Engineering Company Limited, 033479 Ontario Limited, Pigott Investments Limited, Pigott Construction Company Limited (Respondents) (*Withdrawn*)

1285-96-R: Brewery, General and Professional Workers' Union (Applicant) v. Med-Chem Laboratories Ltd., Medical Sciences Laboratories of Newmarket Ltd., Med-Chem Health Care Services Inc. (Respondents) (*Withdrawn*)

SALE OF A BUSINESS

4596-94-R: International Union of Bricklayers and Allied Craftsmen, Local 7 (Applicant) v. 1957 Masonry Inc., Olivieri Masonry Ltd., Ottawa-Carleton Bricklaying and Masonry Limited, Dario Olivieri, Donna Olivieri and Concrete Developments Ltd. (Respondents) (*Withdrawn*)

1615-95-R: International Brotherhood of Electrical Workers, Local 1687 (Applicant) v. 879917 Ontario Ltd. c.o.b. as Ames Electric and Doug Winter Electric (Respondents) (*Granted*)

2022-95-R: International Brotherhood of Painters and Allied Trades, Local 1824 (Applicant) v. Twin City Painting Limited, Brody Enterprises Inc., and Dennis McMahon, c.o.b. as McMahon Contracting (Respondents) (*Dismissed*)

2988-95-R: United Steelworkers of America (Applicant) v. Circle-Inn Limited, 988492 Ontario Inc. (Respondents) (*Granted*)

3202-95-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Trans-Global Electric Inc. and Quail-Brooks & Associates Electrical Contractors Inc. (*Granted*)

4031-95-R: The Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 598 (Applicant) v. Vulcan Method Waterproofing & General Contracting Inc. and Vulcan Group Inc. (Respondents) (*Endorsed Settlement*)

0012-96-R: Labourers' International Union of North America, Local 183 (Applicant) v. Lanark Furniture Corporation, Distinctive Designs Furniture Inc., United Steelworkers of America (Respondents) (*Granted*)

0743-96-R: Canadian Union of Public Employees Local 3157 (Applicant) v. Huronia District Hospital, Penetanguishene General Hospital, North Simcoe Hospital Alliance (Respondents) v. Ontario Public Service Employees Union (Intervener) (*Withdrawn*)

0919-96-R: Sheet Metal Workers' International Association, Local 47 (Applicant) v. 969195 Ontario Inc. c.o.b. Skoff Roofing, Ottawa Roof Riders Ltd., Richmond Roofing Limited (Respondents) (*Endorsed Settlement*)

1020-96-R: Iron Workers District Council of Ontario and International Association of Bridge, Structural and Ornamental Iron Workers, Local 786 (Applicant) v. Walter & SCI Construction (Canada) Limited, Pigott Contractors Inc., Fraser Brace Engineering Company Limited, 033479 Ontario Limited, Pigott Investments Limited, Pigott Construction Company Limited (Respondents) (*Withdrawn*)

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

3132-95-R: Old Oak Properties Inc. (Applicant) v. Labourers' International Union of North America, Local 1059 (Respondent) (*Dismissed*)

3800-95-R: Intercon Security Limited (Applicant) v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Respondent) (*Withdrawn*)

1054-96-R: Deborah Mykietiak and Satyanand Ramraj (Applicants) v. Amalgamated Clothing and Textile Workers Union AFL-CIO, CLC (Respondent) v. Nise N Kosy Incorporated c.o.b. as The Incredible T-Shirt Company (Intervener)

Unit: "all employees of Nise N Kosy Incorporated c.o.b. as the Incredible T-Shirt Company in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisors, office, sales staff, persons regularly employed for not more than 24 hours per week and students" (92 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	96
Number of persons who cast ballots	92
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	89
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	43
Number of ballots marked against respondent	49
Number of ballots segregated and not counted	0

1105-96-R: Veronica Peters (Applicant) v. Retail Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America, Local 1000 (Respondent) v. Bannerman Enterprises Inc. (Intervener)

Unit: "all employees of Bannerman Enterprises Inc. in the City of Kirkland Lake, save and except managers and persons above the rank of manager" (30 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	34
Number of persons who cast ballots	31
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	31
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	30
Number of ballots segregated and not counted	0

1135-96-R: Peggy Yeo (Applicant) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Respondent) v. Olympus Plastics (Intervener) (*Dismissed*)

1168-96-R: Group of Employees of Pano Cap Canada Limited (Applicant) v. United Food & Commercial Workers International Union, Local 1977 (Respondent) v. Pano Cap Canada Limited (Intervener)

Unit: "all employees of the company in Kitchener, save and except foremen, persons above the rank of foreman, quality control supervisor, office, clerical and sales staff and persons regularly employed for not more than 24 hours per week." (47 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	51
Number of persons who cast ballots	44
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	35
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	31
Number of ballots marked against respondent	11
Number of ballots segregated and not counted	1

1170-96-R: Employees of the Thousand Islands Tax/Duty Free Store Limited (Applicant) v. Ontario Liquor Board Employees' Union (Respondent) (*Dismissed*)

1221-96-R: Kenneth Closs (Applicant) v. International Union of Bricklayers and Allied Craftsmen, Local 29 Ontario (Respondent) v. Algoma Steel Inc., (Intervener)

Unit: “all the employees of the Company in the occupational classification of Bricklayers and Apprentices at its Steelworks in Sault Ste. Marie, Ontario” (62 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	62
Number of persons who cast ballots	49
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	49
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	46

1224-96-R: Gary Sine (Applicant) v. Retail Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America Local 414 (Respondent) v. Somerset Specialties Ltd., c.o.b. as Trent News Company (Intervener)

Unit: “all employees of Somerset Specialties Limited c.o.b. as Trent News Company, in the City of Cobourg, save and except supervisors, persons above the rank of supervisor, sales, office and clerical staff, jobbers, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period.” (7 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	4
Number of ballots marked against respondent	2
Number of ballots segregated and not counted	2

1266-96-R: Dan Fleming (Applicant) v. The Graphic Communications International Union Local 500M, Toronto (Respondent) v. Parker Pad & Printing Limited (Intervener)

Unit: “all employees of Parker Pad & Printing Limited in the Municipality of Metropolitan Toronto, save and except non-working foremen, persons above the rank of non-working foremen, managers, officer clerical and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period” (9 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	9

1267-96-R: Jack Reid (Applicant) v. Laundry and Linen Drivers and Industrial Workers Union, Teamsters Local 847, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent) v. Cichon Enterprises Limited c.o.b. as Imperial Dust Control (Intervener)

Unit: “all Route Sales Agents of Cichon Enterprises Limited, c.o.b. as Imperial Dust Control in the Regional Municipality of Niagara, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, production employees and students employed during the school vacation” (4 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	4

1277-96-R: Joe Martin (Local 717K) (Applicant) v. U.N.I.T.E. (Respondent) (*Dismissed*)

1299-96-R: The Employees of Ryder Concrete Forming Ltd. (Applicant) v. Labourers' International Union of North America, Ontario Provincial District Council (Respondent) (*Dismissed*)

1300-96-R: The Deck Hands/Ordinary Seaman aboard the Northern Belle ("Deck Hands") (Applicant) v. Seafarers International Union (United States) ("S.I.U.") (Respondent) (*Dismissed*)

1374-96-R: The Employees of the Corporation of the Township of Faraday (Applicant) v. The International Union of Operating Engineers, Local 793 (Respondent) (*Dismissed*)

1413-96-R: Jim Leask (Applicant) v. United Food and Commercial Workers International Union Local 175 (Respondent) (*Granted*)

1536-96-R: The Employees of Marchélino Restaurants Ltd. Ottawa (Applicant) v. United Steelworkers of America (Respondent) v. Marchélino Restaurants Ltd. c.o.b. as Movenpick Restaurants (Intervener) (*Dismissed*)

APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)

1387-96-U: Ellis Don Construction Ltd. (Applicant) v. International Union of Bricklayers and Allied Craftworkers, Local 2, Toronto-Barrie and Danny Buttazzoni (Respondent) (*Withdrawn*)

APPLICATIONS FOR DECLARATION OF UNLAWFUL LOCKOUT

1359-96-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 195 (Applicant) v. HSP-101 Inc., c.o.b. as Tecumseh Metal Products (Plant 5) (Respondent) (*Withdrawn*)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

1227-94-U; 1228-94-U: Giancarlo (John) Cesaroni (Applicant) v. Sean O'Ryan, Alex Craig, Donald Hoggarth and David Clarke, Local 46 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (UA 46) is not named in the capacity of a Responding Party, but joins in this Response as set out in the attached Schedule (Respondents); Giancarlo (John) Cesaroni (Applicant) v. Sean O'Ryan, Local 46 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada is not named in the capacity of a Responding Party, but joins in this Response as set out in the attached Schedule (Respondents) (*Dismissed*)

2516-94-U: Sheila Boyle (Applicant) v. The National Union of Automobile, Aerospace and Agricultural Implement Workers of Canada, and its Local 27 (C.A.W.) (Respondent) v. Northern Telecom Canada Limited (Intervener) (*Withdrawn*)

2861-94-U: Robert J. Pare (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union (CAW-Canada) and its Local 195 (Respondent) v. Fabricated Steel Products (Intervener) (*Dismissed*)

3732-94-U: Zareena Husain (Applicant) v. Ontario Nurses' Association (Respondent) (*Withdrawn*)

3860-94-U: Ted (Theodore) Ray Majkot (Applicant) v. International Alliance of Theatrical Stage Employees (IATSE) and Moving Picture Machine Operators of the United States and Canada - Local 634 (Respondent) (*Withdrawn*)

4595-94-U: International Union of Bricklayers and Allied Craftsmen, Local 7 - Canada (Applicant) v. 1957 Masonry Inc., Olivieri Masonry Ltd., Ottawa-Carleton Bricklaying and Masonry Limited and Concrete Developments Ltd. (Respondents) (*Withdrawn*)

1786-95-U: Canadian Union of Operating Engineers and General Workers (Applicant) v. Burlington Golf and Country Club Limited (Respondent) (*Granted*)

2199-95-U: Labourers' International Union of North America, Local 1059 (Applicant) v. Old Oak Properties Inc. and Ewald Bierbaum (Respondent) (*Granted*)

2984-95-U: Dev Jebodh (Applicant) v. Ontario Public Service Employees Union (Respondent) v. The Crown in Right of Ontario (as represented by Management Board of Cabinet) (Intervener) (*Dismissed*)

3019-95-U: Juanita Paris (Applicant) v. Canadian Union of Public Employees and its Local 2332 (Respondent) v. Kenora Patricia Child and Family Services (Intervener) (*Endorsed Settlement*)

3118-95-U; 3492-95-U: United Food & Commercial Workers, Local 206 Chartered by the United Food and Commercial Workers International Union, CLC, AFL-CIO (Applicant) v. Lionhead Golf & Country Club, Division of Kaneff Properties Limited (Respondent) (*Withdrawn*)

3314-95-U; 1258-96-U: IWA Canada (Applicant) v. K I Pembroke Inc. and L. Scott Deugo (Respondent) (*Withdrawn*)

4023-95-U: International Association of Machinists and Aerospace Workers Local 905 (Applicant) v. Messier-Dowty Inc. (Respondent) (*Withdrawn*)

4036-95-U: Joan Price, Anne Storing, Lynn Guindon (Applicant) v. Ontario Public Service Employees Union (Respondent) (*Granted*)

4037-95-U: The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 463 (Applicant) v. Pinnacle Mechanical Group Limited (Respondent) (*Dismissed*)

4104-95-U: Ontario Liquor Board Employees' Union (Applicant) v. Fort Erie Duty Free Shoppe Inc. (Respondent) (*Withdrawn*)

4201-95-U: Carol Humber (Applicant) v. Amalgamated Clothing And Textile Workers Union Local 1167 (Respondent) v. Valle Foam Industries Inc. (Intervener) (*Withdrawn*)

0185-96-U: Amadeu Prim (Applicant) v. Labourers' International Union of North America, Local 527 (Respondent) (*Withdrawn*)

0351-96-U; 0418-96-U: International Brotherhood of Electrical Workers Construction Council of Ontario (Applicant) v. 956400 Ontario Inc., c.o.b. as M H Electric (Respondent) (*Withdrawn*)

0425-96-U: Brenda I. Robinson (Applicant) v. C.A.W. Local 222 and C.A.W. National Union (Respondent) v. General Motors of Canada Limited (Intervener) (*Withdrawn*)

0464-96-U: United Steelworkers of America (Applicant) v. L.A. Blues Sports Bar and Grill, Circle-Inn Limited (Respondents) (*Withdrawn*)

0597-96-U: Sharon L. Klassen (Applicant) v. Office & Professional Employees International Union, Local 327 (Respondent) (*Withdrawn*)

0616-96-U: David Gazit (Applicant) v. Ontario Public Service Employees Union (Respondent) v. George Brown College (Intervener) (*Dismissed*)

0691-96-U: Lindon Robinson (Applicant) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Respondent) (*Withdrawn*)

0706-96-U; 0707-96-U: CUPE and its Local 1734 (Applicant) v. York Region Board of Education (Respondent); CUPE and its Local 1196 (Applicant) v. York Region Board of Education (Respondent) (*Withdrawn*)

0728-96-U; 0729-96-U: Kevin O'Hara (Applicant) v. Ajax Precision Employees Association (Respondent) v. Ajax Precision Manufacturing Limited (Intervener); Tamara Maine (Applicant) v. Ajax Precision Employees Association (Respondent) v. Ajax Precision Manufacturing Limited (Intervener) (*Withdrawn*)

0745-96-U: Baldev Singh (Applicant) v. Chrysler Canada, (Respondents) (*Withdrawn*)

0772-96-U: Reginaldo Silva (Applicant) v. United Food and Commercial Workers International Union, Local 1000A (Respondent) v. Star Valenti Inc. (Intervener) (*Dismissed*)

0842-96-U: Pina Nicolosi (Applicant) v. Teamsters Local Union 938 (Respondent) (*Withdrawn*)

0862-96-U: Service Employees Union, Local 210 (Applicant) v. The Windsor Roman Catholic Separate School Board (Respondent) (*Withdrawn*)

0949-96-U; 0950-96-U: Graphic Communications International Union, Local 517M (Applicant) v. Aylmer Express Limited (Respondent) (*Withdrawn*)

0952-96-U: Canadian Union of Public Employees Local 2191 (Applicant) v. Metropolitan Toronto Association for Community Living (Respondent) (*Withdrawn*)

0965-96-U: International Brotherhood of Electrical Workers, Local 636 (Applicant) v. The Hydro-Electric Commission of the Town of Port Hope (Respondent) (*Withdrawn*)

0997-96-U: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Marusa Marketing Inc. (Respondent) (*Withdrawn*)

0998-96-U: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Park 'N Fly (Respondent) (*Withdrawn*)

1006-96-U: Dorothy Brohman (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1973 (Respondent) v. General Motors of Canada Limited (Intervener) (*Withdrawn*)

1032-96-U: International Brotherhood of Electrical Workers, Local 636 (Applicant) v. Canadian Inkjet Systems Ltd. (Respondent) (*Withdrawn*)

1034-96-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Falcon Plastics Inc. (Respondent) (*Withdrawn*)

1042-96-U: Ms. Shirley Joyce Virginia Henry (Applicant) v. The Ontario Cancer Institute/Princess Margaret Hospital (Respondent) v. Ontario Nurses' Association (Intervener) (*Dismissed*)

1127-96-U: Wilfrid Laurier University Faculty Association (Applicant) v. Wilfrid Laurier University (Respondent) (*Withdrawn*)

1128-96-U: International Association of Machinists and Aerospace Workers, Local Lodge 1550 (Applicant) v. Crane Canada Inc. (Respondent) (*Withdrawn*)

1136-96-U; 1271-96-U: Retail Wholesale Canada, Canadian Service Sector, Division of the United Steelworkers of America, Local 414 (Applicant) v. Dew Engineering and Development Limited (Respondent); Dew Engineering and Development Limited (Applicant) v. Retail Wholesale Canada, Canadian Service Sector, Division of the United Steelworkers of America, Local 414 (Respondent) (*Withdrawn*)

1138-96-U: Alan Magder (Applicant) v. Co-Op Cabs (Respondent) (*Withdrawn*)

1159-96-U: London and District Service Workers' Union, Local 220 (Applicant) v. Metcalfe Gardens (Respondent) (*Withdrawn*)

1166-96-U: Teamsters Local Union 419 (Applicant) v. Safety Kleen Canada Inc., c.o.b. as Safety Kleen Oil Services (Respondent) (*Withdrawn*)

1178-96-U: International Brotherhood of Electrical Workers' Union Local 1739 (Applicant) v. Nu-Tek Electric Incorporated (Respondent) (*Withdrawn*)

1184-96-U: Christian Labour Association of Canada (Applicant) v. Country Manor Retirement Facility (Respondent) (*Withdrawn*)

1186-96-U: Harry Small (Applicant) v. A. G. Sherman (Union Rep.), Dover Flour Mills (Respondents) (*Dismissed*)

1193-96-U: Philip DeKort (Applicant) v. Canadian Union of Public Employees Local 1238 (Respondent) (*Withdrawn*)

1198-96-U: Negash Getahun (Applicant) v. Hotel Employees Restaurant Employees Union, Local 75, chartered by the Hotel Employees and Restaurant Employees International Union (Respondent) (*Dismissed*)

1210-96-U: United Food and Commercial Workers International Union, Local 175/633 (Applicant) v. Seaforth Creamery Inc. (Respondent) (*Withdrawn*)

1215-96-U: Reuben Gooden (Applicant) v. Park "N" Fly (Respondent) (*Withdrawn*)

1288-96-U: Service Employees Union, Local 183 (Applicant) v. Belleville General Hospital (Respondent) (*Dismissed*)

1293-96-U: Power Workers' Union (Applicant) v. Milton Hydro Electric Commission, Donald Thorne, Richard Murray (Respondents) (*Withdrawn*)

1326-96-U: Mike Langford (Applicant) v. C.A.W. (Respondent) (*Dismissed*)

1360-96-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 195 (Applicant) v. HSP-101 Inc., c.o.b. as Tecumseh Metal Products (Plant 5) (Respondent) (*Withdrawn*)

1373-96-U: Nicholas Guy Carmichael (Applicant) v. Toronto Transit Commission (Respondent) (*Dismissed*)

1388-96-U: Stephen L. Wright (Applicant) v. A.D.M. Milling (Respondent) (*Dismissed*)

1400-96-U: Luis Lopez (Applicant) v. C.A.W. Local 29 and Consumer Glass (Respondents) (*Withdrawn*)

1438-96-U: Borisa Kapor (Applicant) v. Hayes Dana Inc. (Respondent) (*Dismissed*)

1441-96-U: Edward Tseytlin (Applicant) v. Arvin Ride Control Products (Respondent) (*Dismissed*)

1474-96-U; 1475-96-U: Habib Najjar (Applicant) v. Hotel Employees Restaurant Employees Union, Local 75 and Delta Chelsea Inn Hotel (Respondents) (*Dismissed*)

1515-96-U: Milan Malusic (Applicant) v. Maple Leaf Pork (Respondent) (*Dismissed*)

1553-96-U: Kim Hamer (Applicant) v. Karen Hambrock of Quality Suites by Journey's End Corp. (Respondent) (*Dismissed*)

1557-96-U: Ms. Sylvia Rocke (Applicant) v. Schneider Employees' Association (Respondent) (*Dismissed*)

APPLICATIONS FOR RELIGIOUS EXEMPTION

3289-94-M: Matthew Watt (Applicant) v. United Steel Workers of America, Pinkerton's of Canada Limited (Respondents) (*Withdrawn*)

4117-95-M: Desmond John McAdam (Applicant) v. AMAPECO and Ministry of Finance, Assessment Division (Respondents) (*Withdrawn*)

0881-96-M: Miss Kathryn Ann Abel (Applicant) v. Canadian Union of Public Employees (CUPE) and Workers' Compensation Board (Respondents) (*Withdrawn*)

1494-96-M: Miss Sandra P. Cole (Applicant) v. Miracle Food Mart (Respondent) (*Dismissed*)

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

1059-96-M: Pinkerton's of Canada Limited (Applicant) v. United Steelworkers of America, Local 5297 (Respondent) (*Granted*)

TRUSTEESHIP

2311-95-T: Hotel Employees & Restaurant Employees International Union (Applicant) v. Hospitality, Commercial and Service Employees, Local 73 chartered by the Hotel Employees & Restaurant Employees International Union (Respondent) (*Granted*)

JURISDICTIONAL DISPUTES

0642-96-JD: Ontario Nurses' Association (Applicant) v. Network North, The Community Mental Health Group and Ontario Public Service Employees Union (Respondents) (*Granted*)

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

0048-96-OH: Brian Hansen (Applicant) v. Three County Recycling & Composting Inc. (Respondent) (*Withdrawn*)

0617-96-OH: David Gazit (Applicant) v. George Brown College (Respondent) (*Dismissed*)

0900-96-OH: Ali Douha (Applicant) v. Commercial Spring and Tool Company Limited (Respondent) (*Dismissed*)

1043-96-OH: Ms. Shirley Joyce Virginia Henry (Applicant) v. The Ontario Cancer Institute/Princess Margaret Hospital (Respondent) v. Ontario Nurses' Association (Intervener) (*Dismissed*)

1124-96-OH: Jennifer Wilson (Applicant) v. Veltri Stamping Corporation (Respondent) (*Dismissed*)

1363-96-OH: Sandy Hoffman (Applicant) v. A & H Custom Machine (Respondent) (*Withdrawn*)

CONSTRUCTION INDUSTRY GRIEVANCES

1005-92-G; 1865-94-G: International Union of Operating Engineers, Local 793 (Applicant) v. PCL Constructors Eastern Inc. (Respondent) (*Withdrawn*)

0219-94-G: Labourers' International Union of North America, Local 183 (Applicant) v. Delfino Masonry Ltd. (Respondent) (*Withdrawn*)

3095-94-G: Ontario Pipe Trades Council, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 666 (Applicant) v. Garth Warren Philbrick c.o.b. as G.T.D. Enterprises and/or G.T.D and Dorval Mechanical Inc. (Respondents) (*Withdrawn*)

3673-94-G: International Union of Bricklayers and Allied Craftsmen, Local 7 - Canada (Applicant) v. 1957 Masonry Inc., Olivieri Masonry Ltd., Ottawa-Carleton Bricklaying and Masonry Limited (Respondents) (*Withdrawn*)

2021-95-G: International Brotherhood of Painters and Allied Trades, Local 1824 (Applicant) v. Twin City Painting Limited, Brody Enterprises Inc., and Dennis McMahon, c.o.b. as McMahon Contracting (Respondents) (*Dismissed*)

2183-95-G: Operative Plasterers and Cement Masons International Association of the United States and Canada, Local 598 (Applicant) v. Pro-Tech Building Restoration (Respondent) (*Endorsed Settlement*)

2466-95-G; 3168-95-G: International Union of Elevator Constructors and its Local 96 (Applicant) v. Montgomery Kone (Respondent) (*Withdrawn*)

3130-95-G: Montgomery Kone and National Elevator and Escalator Association (Applicant) v. International Union of Elevator Constructors and its Local 96 (Respondent) (*Withdrawn*)

3201-95-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Trans-Global Electric Inc. and Quail-Brooks & Associates Electrical Contractors Inc. (Respondents) (*Granted*)

0302-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. York Carpentry (Respondent) (*Endorsed Settlement*)

0561-96-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Northern Flooring Company Limited (Respondent) (*Withdrawn*)

0645-96-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Thomas and Banlaki Electrical Contractors Limited (Respondent) (*Endorsed Settlement*)

0960-96-G: The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Capricorn Mechanical Limited (Respondent) (*Withdrawn*)

1012-96-G; 1247-96-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. K & M Construction Limited, K & M Ontario, 566937 Ontario Ltd. (Respondents) (*Granted*)

1019-96-G: International Association of Bridge, Structural and Ornamental Iron Workers, Local 786 (Applicant) v. Walter & SCI Construction (Canada) Limited (Respondent) (*Withdrawn*)

1061-96-G: International Union of Bricklayers and Allied Craftworkers Local 2, Toronto, Barrie, Ontario and the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftworkers (Applicant) v. JEM Masonry (Respondent) (*Withdrawn*)

1081-96-G: Labourers' International Union of North America, Local 527 (Applicant) v. Ottawa Structural Concrete Services Ltd. (Respondent) (*Endorsed Settlement*)

1091-96-G: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. C.S.E. Corporation c.o.b. Concept Systems Electric (Respondent) (*Endorsed Settlement*)

1121-96-G: Labourers' International Union of North America Local 183 (Applicant) v. Orta Forming & Construction Limited (Respondent) (*Withdrawn*)

1130-96-G: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 787 (Applicant) v. Black & McDonald Limited (Respondent) (*Withdrawn*)

1155-96-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. J.D. Caulking Ltd. (Respondent) (*Endorsed Settlement*)

1185-96-G: Labourers' International Union of North America, Local 1059 (Applicant) v. 7152411 Ontario Limited c.o.b. as Hyde Park Concrete Co. (Respondent) (*Granted*)

1205-96-G: Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. Majestic International Marketing Group Inc. (Respondent) (*Granted*)

1214-96-G: Ontario Council of the International Brotherhood of Painters and Allied Trades, Local 1590 (Applicant) v. City Acoustics Limited (Respondent) (*Granted*)

1223-96-G: Labourers' International Union of North America, Local 493 (Applicant) v. Clarkson Construction Company Ltd. (Respondent) (*Withdrawn*)

1248-96-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. N.C.S. Carpet Ltd. (Respondent) (*Granted*)

1283-96-G: The United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Carleton Acoustic Construction (Respondent) (*Endorsed Settlement*)

1284-96-G: The United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Cambareri Construction Incorporated (Respondent) (*Granted*)

1294-96-G: United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. Sera Construction Limited (Respondent) (*Withdrawn*)

1302-96-G: Labourers' International Union of North America, Local 506 (Applicant) v. CNR Masonry (Respondent) (*Endorsed Settlement*)

1311-96-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Majestic International Marketing Group Inc. (Respondent) (*Endorsed Settlement*)

1317-96-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Precise Drywall (Respondent) (*Withdrawn*)

1318-96-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Jaf-Con Construction (Respondent) (*Withdrawn*)

1334-96-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. E.S.D. Industries Inc. (Respondent) (*Withdrawn*)

1341-96-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 800 (Applicant) v. Bennett Mechanical (Respondent) (*Withdrawn*)

1343-96-G: Craftsmen Local 28 Ontario (Applicant) v. Cambrian Construction and Masonry Co. a division of 385310 Ontario Inc. (Respondent) (*Withdrawn*)

1345-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. Canadian Conduit & Cable Constructors Inc. (Respondent) (*Granted*)

1353-96-G: Labourers' International Union Of North America, Local 183 (Applicant) v. Cobra Drain & Development Corporation (Respondent) (*Endorsed Settlement*)

1364-96-G: International Brotherhood of Electrical Workers, Local Union 402 (Applicant) v. E. S. Fox Limited (Respondent) (*Withdrawn*)

1381-96-G: International Union of Operating Engineers, Local 793 (Applicant) v. 668463 Ontario Inc. o/a Advance Excavating (Respondent) (*Granted*)

1382-96-G: International Union of Operating Engineers, Local 793 (Applicant) v. Andrew Paving & Engineering Limited (Respondent) (*Granted*)

1383-96-G: International Union of Operating Engineers, Local 793 (Applicant) v. Highvalley Landscaping & Contracting Ltd. (Respondent) (*Granted*)

1384-96-G: International Union of Operating Engineers, Local 793 (Applicant) v. D.W. Smith Excavating Ltd. (Respondent) (*Granted*)

1386-96-G: International Union of Operating Engineers, Local 793 (Applicant) v. Rino Forming Limited (Respondent) (*Granted*)

1392-96-G: United Association of Journeymen and Apprentices of the Plumbing and PipeFitting Industry of the United States and Canada, Local Union 463 (Applicant) v. R & B Mechanical Services Inc. (Respondent) (*Endorsed Settlement*)

1422-96-G: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Centennial Electric Limited (Respondent) (*Withdrawn*)

1424-96-G: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Don Valley Electric (919937 Ontario Limited) (Respondent) (*Withdrawn*)

1429-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. Conbora Forming Ltd. (Respondent) (*Granted*)

1430-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. Concord Concrete & Drain Inc. (Respondent) (*Granted*)

1431-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. Wasero Construction (1991) Ltd. (Respondent) (*Granted*)

1432-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. Econo Excavating & Paving (1991) Co. Ltd. (Respondent) (*Granted*)

1435-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. Printz General Contracting Inc. (Respondent) (*Granted*)

1479-96-G: Construction Workers Local 53, CLAC (Applicant) v. Empire Roofing Corporation (Respondent) (*Endorsed Settlement*)

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

2416-95-U: Adem Hamdic (Applicant) v. International Brotherhood of Electrical Workers, Local 1788 (Respondent) v. Ontario Hydro (Intervener) (*Denied*)

3523-95-R: Steven R. Gerber (Applicant) v. International Brotherhood of Electrical Workers, Local 353 (Respondent) v. Edwards, A Unit of General Signal (Intervener) (*Denied*)

4205-95-U: Nazzareno Protomanni (Applicant) v. Canadian Union of Public Employees, Local 1165 (Respondent) (*Dismissed*)

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING SEPTEMBER 1996

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

4663-94-R: United Steelworkers of America (Applicant) v. Gourmet Baker Inc. (Respondent)

Unit: "all employees of Gourmet Baker Inc. in the Town of Simcoe, save and except supervisors, persons above the rank of supervisor, office and clerical staff, and persons for whom any trade union held bargaining rights as of March 30, 1995" (150 employees in unit) (*Having regard to the agreement of the parties*)

0984-95-R: United Steelworkers of America (Applicant) v. Videolux Canada Inc. (Respondent)

Unit: "all employees of Videolux Canada Inc. in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (42 employees in unit) (*Having regard to the agreement of the parties*)

Bargaining Agents Certified Under Sec. 11 of the Act

0264-96-R: International Brotherhood of Painters and Allied Trades, Local Union 1819 (Glaziers) (Applicant) v. Balkan Glass & Aluminum Inc. (Respondent)

Unit: "all glaziers and glaziers' apprentices in the employ of Balkan Glass & Aluminum Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all glaziers and glaziers' apprentices in the employ of Balkan Glass & Aluminum Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (6 employees in unit)

Bargaining Agents Certified Subsequent to Vote

0366-96-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Teledyne Specialty Equipment Metal Products (Respondent) v. Philip Parsons, Steve Gilbert & Paul Steele (Intervener)

Unit: "all employees of Teledyne Speciality Equipment Metal Products, in the City of Woodstock, save and except supervisors, persons above the rank of supervisor, office, clerical, engineering and sales staff" (93 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	86
Number of persons who cast ballots	82
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	82
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	43
Number of ballots marked against applicant	39
Number of ballots segregated and not counted	0

0991-96-R: Service Employees Union, Local 210 (Applicant) v. Ontario Cancer Treatment and Research Foundation, Windsor Regional Cancer Centre (Respondent)

Unit: "all office and clerical employees employed by the Ontario Cancer Treatment and Research Foundation, Windsor Regional Cancer Centre at its 2220 Kildare Road location in the City of Windsor, Ontario, save and except, supervisors, persons above the rank of Supervisor, Professional Medical Staff, Career Scientists, Physicists and Physicist Trainees, Paramedical and Technical employees, Registered Technologists and Radiation Therapists, Registered and Graduate Nurses, persons in positions funded by research grants, Secretary to the Chief Executive Officer, Human Resources/Payroll/accounts Payable Administrator, Senior Accounting Clerk, Clinical Information/Management Support Secretaries, Technical Co-ordinator, Information Systems Technical Support Specialist, Communications Officer/Process Development Co-ordinator, Students in positions funded by Foundation Grants or Scholarships, Co-op Student positions and persons in bargaining units for whom any trade union held bargaining rights as of July 3, 1996" (63 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	5

1180-96-R: Construction Workers Local 150 affiliated with the Christian Labour Association of Canada (Applicant) v. Ground Aerial Maintenance Service Ltd. (Respondent) v. International Brotherhood of Electrical Workers' Local Union 303 (Intervener)

Unit: "all electricians and electricians' apprentices, Journeyman Lineman - Splicer, Maintenance Lineman - Splicer - Journeyman Electrician - Splicer, forester, Groundman/Equipment Operator, Groundman/Driver, Mechanic, Utilityman, Painter, Woodworker, Maintenance Handyman and Apprentices in the employ of Ground Aerial Maintenance Service Ltd., in all sectors of the construction industry in the Niagara Region and the portion of Haldimand-Norfolk Region east of the road running south from Castorville in Lake Erie, save and except non-working foremen and persons above the rank of non-working foreman" (14 employees in unit)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	12
Number of ballots marked in favour of applicant	11
Number of ballots marked in favour of intervener	0
Number of ballots segregated and not counted	1

1251-96-R: Brewery, General and Professional Workers' Union (Applicant) v. Med-Chem Laboratories Ltd., Medical Sciences Laboratories of Newmarket Ltd., Med-Chem Health Care Services Inc. (Respondents) v. Rosemary Eckert (Intervener)

Unit: "all employees of Med-Chem Laboratories Ltd., Medical Sciences Laboratories of Newmarket Ltd., Med-Chem Health Care Services Inc. in the Municipality of Metropolitan Toronto, save and except persons employed in a confidential capacity with respect to labour relations, section heads, supervisors and persons above the rank of section head or supervisor" (161 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	900
Number of persons who cast ballots	577
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	501
Number of segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names do not appear on voters' list	58
Number of spoiled ballots	3

Number of ballots marked in favour of applicant	263
Number of ballots marked against applicant	235
Number of ballots segregated and not counted	76

1272-96-R: Hotel Employees Restaurant Employees International Union Local 75 (Applicant) v. 343419 Ontario Ltd. c.o.b. as Derby Community Bingo and Windsor Bingo Palace Ltd. c.o.b. as Windsor Bingo Palace (Respondents)

Unit #1: "all employees of 343419 Ontario Ltd. c.o.b. as Derby Community Bingo in the City of Windsor, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (42 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	46
Number of persons who cast ballots	33
Number of ballots marked in favour of applicant	28
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	2

Unit #2: "all employees of Windsor Bingo Palace Ltd. c.o.b. as Windsor Bingo Palace in the City of Windsor, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (42 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	46
Number of persons who cast ballots	33
Number of ballots marked in favour of applicant	28
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	2

1320-96-R: Ontario Public Service Employees Union (Applicant) v. Canadian Mental Health Association (Kingston Branch) (Respondent)

Unit: "all employees of the Canadian Mental Health Association (Kingston Branch) in the City of Kingston, save and except Bookkeeper, Office Coordinator, Program Director and persons above the rank of Program Director" (17 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	3

1399-96-R: Teamsters Local Union 91 (Applicant) v. Palmar Inc. (Respondent)

Unit: "all employees of Palmar Inc. in the City of Kingston, save and except supervisors and persons above the rank of supervisor" (2 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1414-96-R: Service Employees International Union, Local 204 Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. St. Michael's Hospital (Respondent)

Unit: "all Registered Practical Nurses employed by St. Michael's Hospital in Metropolitan Toronto, save and except registered practical nursing supervisory staff and those above the rank of supervisor" (2752 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	120
Number of persons who cast ballots	83
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	81
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	49
Number of ballots marked against applicant	33

1427-96-R: Independent Paperworkers of Canada (Applicant) v. Appleton Papers Canada Limited, Peterborough Distribution Center (Respondent)

Unit: "all production and maintenance employees of Appleton Papers Canada Limited at its Peterborough Distribution Center in the City of Peterborough, save and except assistant supervisors, persons above the rank of assistant supervisor, office and clerical staff, chemists, control and laboratory technicians, paper testers, watchmen and guards" (10 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of applicant	7

1428-96-R: International Brotherhood of Electrical Workers Construction Council of Ontario (Applicant) v. 1059844 Ontario Inc., c.o.b. as Dynamic Systems (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of 1059844 Ontario Inc., c.o.b. as Dynamic Systems, in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of 1059844 Ontario Inc., c.o.b. as Dynamic Systems in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville; and Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	3

1452-96-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Riviera Electrical Contractor Inc. (Respondent)

Unit: "all journeymen and apprentice electricians in the employ of Riviera Electrical Contractors Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice electricians in the employ of Riviera Electrical Contractor Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the

County of Simcoe and the District Municipality of Muskoka; the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (27 employees in unit)

Number of names of persons on revised voters’ list	21
Number of persons who cast ballots	28
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	19
Number of segregated ballots cast by persons whose names appear on voter’s list	1
Number of segregated ballots cast by persons whose names do not appear on voters’ list	8
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	9

1466-96-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Proto Electric Contracting Inc. (Respondent)

Unit: “all electricians and electricians’ apprentices in the employ of Proto Electric Contracting Inc., in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians’ apprentices in the employ of Proto Electric Contracting Inc., in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; and the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (18 employees in unit)

Number of names of persons on revised voters’ list	17
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	11
Number of segregated ballots cast by persons whose names appear on voter’s list	3
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	3

1486-96-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Tam Electric Ltd. (Respondent)

Unit: “all electricians and electricians’ apprentices in the employ of Tam Electric Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians’ apprentices in the employ of Tam Electric Ltd. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria; the County of Simcoe and the District Municipality of Muskoka; the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (35 employees in unit)

Number of names of persons on revised voters’ list	43
Number of persons who cast ballots	33

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	33
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	29
Number of ballots marked against applicant	4

1487-96-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Internazionale Electrical Contractors Ltd. (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of Internazionale Electrical Contractors Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of Internazionale Electrical Contractors Ltd. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	2

1488-96-R: Service Employees Union, Local 183 (Applicant) v. Speciality Care Inc. 818777 Ontario Ltd. o/a The Rosewood Retirement Home (Respondent)

Unit: "all employees of 818777 Ontario Inc. o/a The Rosewood Retirement Home in the City of Kingston save and except supervisors, persons above the rank of supervisor, office and clerical staff" (26 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	7

1498-96-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Discovery Electric Ontario Limited (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of Discovery Electric Ontario Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of Discovery Electric Ontario Limited in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (28 employees in unit)

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	28
Number of spoiled ballots	1

Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	11

1499-96-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Ragno Electric Limited (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of Ragno Electric Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of Ragno Electric Limited in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (20 employees in unit)

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	24
Number of ballots marked in favour of applicant	19
Number of ballots marked against applicant	5

1507-96-R: Brewery, General and Professional Workers' Union (Applicant) v. Med-Chem Laboratories Ltd. (Respondent)

Unit: "all employees of Med-Chem Laboratories Ltd. in the Municipality of Markham save and except persons employed in a confidential capacity with respect to labour relations, section heads, supervisors and persons above the rank of section head" (3 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	2

1509-96-R: Brewery, General and Professional Workers' Union (Applicant) v. Med-Chem Laboratories Limited (Respondent)

Unit: "all employees of Med-Chem Laboratories Ltd. in the Municipality of Stouffville save and except persons employed in a confidential capacity with respect to labour relations, section heads, supervisors and persons above the rank of section head" (2 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	2

1542-96-R: United Steelworkers of America (Applicant) v. MKG Cartridge Systems Inc. (Respondent)

Unit: "all employees of MKG Cartridge Systems Inc. in the City of Mississauga, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (121 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	122
Number of persons who cast ballots	106
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	102

Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	80
Number of ballots marked against applicant	21
Number of ballots segregated and not counted	4

1551-96-R: United Steelworkers of America (Applicant) v. Tara Natural Foods (Respondent)

Unit: "all employees of 710044 Ontario Ltd. carrying on business as Tara Natural Foods in the City of Kingston save and except managers, persons above the rank of manager and office and clerical staff" (10 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	1

1559-96-R: Canadian Union of Public Employees (Applicant) v. Haliburton Highlands Health Services (Respondent)

Unit: "all employees of Haliburton Highlands Health Services, save and except professional medical staff, graduate nursing staff, under-graduate nurses, graduate pharmacists, under-graduate pharmacists, graduate dietitians, student dietitians, supervisors, foremen, persons above the rank of supervisor or foreman, chief engineer, persons regularly employed for not more than 24 hours per week, and persons for whom a trade union held bargaining rights on the date of application; and all employees of Haliburton Highlands Health Services regularly employed for not more than 24 hours per week, save and except professional medical staff, graduate nursing staff, under-graduate nurses, graduate pharmacists, under-graduate pharmacists, graduate dietitians, student dietitians, supervisors, foremen, persons above the rank of supervisor or foreman, chief engineer, and persons for whom a trade union held bargaining rights on the date of application" (5 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

1569-96-R: Communications Workers of America, Printing, Publishing and Media Workers Sector Local No. 14027/139 (Applicant) v. The Beacon Herald of Stratford Limited (Respondent)

Unit: "all employees of The Beacon Herald of Stratford Limited employed in the mailroom in the Town of Stratford, save and except Production Manager, persons above the rank of Production Manager, and persons for whom any trade union held bargaining rights as of August 28, 1996" (14 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12

Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	4

1578-96-R: United Food & Commercial Workers, Local 206 Chartered by the United Food and Commercial Workers International Union, CLC, AFL-CIO (Applicant) v. Colonel John McCrea Memorial, Branch #234, Royal Canadian Legion (Respondent)

Unit: "all employees of Colonel John McCrea Memorial Branch #234, Royal Canadian Legion, 919 York Road, Guelph, Ontario, save and except managers, those above the rank of manager, and those employees working less than 24 hours per week" (5 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	2

1580-96-R: Teamsters Local Union 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen, and Helpers, affiliated with International Brotherhood of Teamsters (Applicant) v. Ferma Concrete (1994) Inc., Ferma Concrete (1994) Inc., (Respondents)

Unit: "all teamsters engaged in on-site construction in the employ of Ferma Concrete (1994) Inc., in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all teamsters engaged in on-site construction in the employ of Ferma Concrete (1994) Inc., in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (15 employees in unit)

Number of names of persons on revised voters' list	34
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of ballots marked in favour of applicant	15

1608-96-R: Canadian Union of Public Employees (Applicant) v. Services Communautaires de Prescott et Russell (Respondent)

Unit: "all employees of Services Communautaires de Prescott et Russell in the United Counties of Prescott and Russell, save and except Executive Assistant, Administrative Director and persons above the rank of Administrative Director" (15 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	1

1610-96-R: Hospitality & Service Trades Union, Local 261 (Applicant) v. Hallmark Housekeeping Services Inc. (Respondent)

Unit: "all employees of Hallmark Housekeeping Services Inc. located in Place de Ville Towers A, B, C, the food court and the parking lots in the City of Ottawa, save and except forepersons, all persons above the rank of foreperson, office and clerical staff" (73 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	73
Number of persons who cast ballots	72
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	54
Number of segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	42
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	18

1623-96-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Premier Electric Inc. (Respondent)

Unit: "all journeymen and apprentice electricians in the employ of Premier Electric Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentice electricians in the employ of Premier Electric Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	8
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	8
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	3

1643-96-R: The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Alpina Mechanical Contracting Inc. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Alpina Mechanical Contracting Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Alpina Mechanical Contracting Inc. in all sectors of the construction industry in that portion of the District of Algoma south of the 49th parallel of latitude, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

1645-96-R: Graphic Communications International Union, Local 500M (Applicant) v. Clarke Lithographing Limited (Respondent)

Unit: "all employees of Clarke Lithographing Limited in the Municipality of Metropolitan Toronto, save and except non-working foremen, persons above the rank of non-working foremen, office and sales staff and persons for whom any trade union held bargaining rights as of September 9, 1996" (2 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	2

1654-96-R: Service Employees Union, Local 210 (Applicant) v. House of Sophrosyne (Respondent)

Unit: "All employees of House of Sophrosyne in the City of Windsor, save and except supervisors and persons above the rank of supervisor" (23 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	3

Applications for Certification Dismissed Without Vote

2823-94-R: Office and Professional Employees International Union (Applicant) v. Consumer's Glass Limited (Respondent)

1620-96-R: Ontario English Catholic Teachers' Association (Applicant) v. Simcoe County Roman Catholic Separate School Board (Respondent)

1723-96-R: Union of Employees of Muller Manufacturing (Applicant) v. Muller Manufacturing Ltd. (Respondent)

Applications for Certification Dismissed Subsequent to Vote

3727-95-R: The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 221 (Applicant) v. Centro Mechanical Inc. (Respondent)

Unit: "all plumbers, plumbers' apprentices and steamfitters, steamfitters' apprentices in the employ of Centro Mechanical Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario all plumbers, plumbers' apprentices and steamfitters and steamfitters' apprentices in the employ of Centro Mechanical Inc. in all other sectors in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville save, and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	5

1177-96-R: International Brotherhood of Electrical Workers' Union Local 1739 (Applicant) v. Nu-Tek Electric Incorporated (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of Nu-Tek Electric Incorporated in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all electricians and electricians' apprentices in the employ of Nu-Tek Electric Incorporated in all other sectors in the County of Simcoe and the District Municipality of Muskoka and in the Townships of Williamston, Teetzel, Gurney, Furquior, O'Brien, Owens, Sulman, Swanson and Nansen (surrounding the Town of Kapuskasing), save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	5

1234-96-R: Christian Labour Association of Canada (Applicant) v. Lenscrafters International Inc. (Respondent)

Unit: "all employees of Lenscrafters International Inc. employed at 900 Maple Avenue, in the City of Burlington, in the region of Halton, save and except supervisors and persons above the rank of supervisor." (12 employees in unit)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	4

1459-96-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Parts Central Inc. (Respondent)

Unit: "all employees of Parts Central Inc., in the City of London, in the County of Middlesex, save and except supervisors, persons above the rank of supervisor, office, clerical, engineering and sales staff" (27 employees in unit)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	13
Number of ballots segregated and not counted	22

1468-96-R: Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. Holiday Inn Toronto Airport (Respondent)

Unit: "all employees of Holiday Inn, Toronto Airport, in Etobicoke, Ontario, save and except supervisors, persons above the rank of supervisor, assistant supervisor, office staff, clerical staff, sales and accounting staff and students employed during the school vacation period" (142 employees in unit)

Number of names of persons on revised voters' list	142
Number of persons who cast ballots	115
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	108
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	3
Number of ballots marked in favour of applicant	51
Number of ballots marked against applicant	55
Number of ballots segregated and not counted	6

1483-96-R: United Steelworkers of America (Applicant) v. Cinram Ltd. (Respondent)

Unit: “all employees of Cinram Ltd. in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, students employed during the school vacation period, order expeditors and/or customer service and security persons” (60 employees in unit)

Number of names of persons on revised voters' list	606
Number of persons who cast ballots	570
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	551
Number of segregated ballots cast by persons whose names appear on voter's list	19
Number of spoiled ballots	4
Number of ballots marked in favour of applicant	208
Number of ballots marked against applicant	339
Number of ballots segregated and not counted	19

1492-96-R: Service Employees Union, Local 210 (Applicant) v. Windsor Yacht Club (Respondent)

Unit: “all employees of the Windsor Yacht Club in the City of Windsor, save and except supervisors, persons above the rank of supervisor, office and clerical employees” (14 employees in unit)

Number of names of persons on revised voters' list	42
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	22
Number of ballots segregated and not counted	2

1527-96-R: United Food and Commercial Workers International Union (Applicant) v. JJ's Hospitality Limited c.o.b. Algoma's Water Tower Inn (Respondent)

Unit: “all employees of the Responding Party in the City of Sault Ste. Marie save and except Housekeeping Manager, Banquet Manager, Lone Star Cafe Kitchen Manager, Banquet and Buffet, Kitchen Manager, Maintenance Department Manager, Lone Star Cafe Shift Manager(s), Food and Beverage Manager, Acting Department Manager and persons above that rank” (129 employees in unit)

Number of names of persons on revised voters' list	133
Number of persons who cast ballots	109
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	93
Number of segregated ballots cast by persons whose names appear on voter's list	16
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	67
Number of ballots segregated and not counted	16

1543-96-R: The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Antrim Mechanical Ltd. (Respondent)

Unit: “all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Antrim Mechanical Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Antrim Mechanical Ltd. in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional

Municipality of Durham; and the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, save and except non-working foremen and persons above the rank of non-working foreman” (10 employees in unit)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	3

1595-96-R: United Food and Commercial Workers International Union, A.F.L. C.I.O. C.L.C. (Applicant) v. Beatrice Foods Inc. at its Windsor Wafers Division (Respondent)

Unit: “all employees of Windsor Wafers in the City of Cambridge, Ontario and the Regional Municipality of Waterloo, save and except forepersons, persons above the rank of foreperson, office, clerical, sales staff and students” (170 employees in unit)

Number of names of persons on revised voters' list	178
Number of persons who cast ballots	167
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	167
Number of ballots marked in favour of applicant	39
Number of ballots marked against applicant	128

Applications for Certification Withdrawn

1119-96-R: Ontario Pipe Trades Council and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 463 (Applicant) v. Process Industrial Company Inc. c.o.b. as Process Mechanical Installations (Respondent)

1313-96-R: United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Clansman Construction (Respondent)

1528-96-R: United Food and Commercial Workers International Union (Applicant) v. Cold Water Fisheries Inc. (Respondent)

1720-96-R: The United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. D.F.G. Drywall (Respondent)

1728-96-R: Millwright District Council of Ontario and its Local 1410 (Applicant) v. Construction Promec (Respondent)

1754-96-R: Ajax Independent Finishes Workers Union (Applicant) v. Du Pont Canada Inc. (Respondent)

FIRST AGREEMENT - DIRECTION

1367-96-FC: International Union of Operating Engineers, Local 793 (Applicant) v. Maray Construction Ltd. (Respondent) (*Granted*)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

1269-95-R: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 663 (Applicant) v. MCR Ontario Inc., Lambton Metal Works Ltd., and Cosar

Contractors Inc. (Respondents) v. Communications, Energy and Paperworkers Union of Canada, Local 672, The Millwright District Council of Ontario on its own behalf and on behalf of its Local 1592, United Brotherhood of Carpenters & Joiners of America, Local 1256 (Interveners) (*Granted*)

2092-95-R: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Thornton Steel Ltd., Jebco Industries Inc., Jebco Mechanical Inc., Rebase Products Inc. (Respondents) v. The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Intervener) (*Granted*)

2656-95-R: Iron Workers District Council of Ontario International Association of Bridge, Structural and Ornamental Iron Workers, Local 759 (Applicant) v. PCL Construction Limited PCL Construction Group Inc., PCL Constructors Inc., PCL Industrial Constructors Inc. PCL Constructors Eastern Inc., PCL Civil Constructors (Canada) Inc. PCL Constructors Prairie Inc. (Respondents) (*Withdrawn*)

3324-95-R: United Brotherhood of Carpenters and Joiners of America, Local 1669; and United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. ATCO Ltd. (formerly ATCO Structures Ltd.), ATCO Quebec Limited, ATCO Structures Inc. and ATCO Noise Management (Respondents) (*Granted*)

4035-95-R: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and its Local 599 (Applicant) v. Thornton Steel Ltd., Jebco Industries Inc., Jebco Mechanical Inc. and Rebase Products Inc. (Respondents) (*Endorsed Settlement*)

0353-96-R: Sheet Metal Workers' International Association, Local 473 (Applicant) v. Moore Air Equipment Inc., CGS Group Ltd. (Respondents) (*Withdrawn*)

0523-96-R: The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 221 (Applicant) v. Emmons Welding Division of 1157777 Ontario Limited and Eastern Welding (Respondents) (*Endorsed Settlement*)

0958-96-R: The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Par Mechanical Ltd. and Capricorn Mechanical Limited (Respondents) (*Granted*)

0967-96-R: Sheet Metal Workers' International Association, Local 562 (Applicant) v. Walden Roofing & Sheet Metal Co. Limited and Nedlaw Roofing Limited (Respondents) (*Withdrawn*)

0968-96-R: Sheet Metal Workers' International Association, Local 562 (Applicant) v. Walden Roofing & Sheet Metal Co. Limited Conestoga Roofing & Sheet Metal Ltd. (Respondents) (*Withdrawn*)

1100-96-R: International Union of Bricklayers and Allied Craftsmen, Local 28 (Applicant) v. G&G Masonry, Division of 970512 Ontario Inc. and Harvard Construction Inc. (Respondents) (*Granted*)

1241-96-R: United Steelworkers of America (Applicant) v. Mayhew & Peterson Inc. and Workplace Furniture Services Inc. (Respondents) (*Withdrawn*)

1249-96-R: Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Siding I.P.E. Limited; Siding Adiv Ltd; Jay-Face Aluminum Ltd. (Respondents) (*Terminated*)

1268-96-R: The United Steelworkers of America (Applicant) v. Ultra Metals Inc. and Enviro-Care Kruncher Corp. (Respondents) (*Withdrawn*)

1518-96-R: United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Dante Gasparotto Limited ("DGL"), Panontin Construction Limited ("PCL"), Gasparotto/Panontin Construction Ltd. ("GPCL") (Respondents) (*Withdrawn*)

SALE OF A BUSINESS

2092-95-R: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Thornton Steel Ltd., Jebco Industries Inc., Jebco Mechanical Inc., Rebase Products Inc. (Respondents) v. The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Intervener) (*Granted*)

2656-95-R: Iron Workers District Council of Ontario International Association of Bridge, Structural and Ornamental Iron Workers, Local 759 (Applicant) v. PCL Construction Limited PCL Construction Group Inc., PCL Constructors Inc., PCL Industrial Constructors Inc. PCL Constructors Eastern Inc., PCL Civil Constructors (Canada) Inc. PCL Constructors Prairie Inc. (Respondents) (*Withdrawn*)

2684-95-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 663 (Applicant) v. MCR Ontario Inc. and Dow Chemical Canada Inc. (Respondents) v. Communications, Energy and Paperworkers Union of Canada, Local 672, United Brotherhood of Carpenters and Joiners of America, Local 1256, The Millwright District Council of Ontario on its own behalf and on behalf of its Local 1592, Labourers' International Union of North America, Local 1089 (Interveners) (*Granted*)

3324-95-R: United Brotherhood of Carpenters and Joiners of America, Local 1669; and United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. ATCO Ltd. (formerly ATCO Structures Ltd.), ATCO Quebec Limited, ATCO Structures Inc. and ATCO Noise Management (Respondents) (*Granted*)

4035-95-R: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and its Local 599 (Applicant) v. Thornton Steel Ltd., Jebco Industries Inc., Jebco Mechanical Inc. and Rebase Products Inc. (Respondents) (*Endorsed Settlement*)

0353-96-R: Sheet Metal Workers' International Association, Local 473 (Applicant) v. Moore Air Equipment Inc., CGS Group Ltd. (Respondents) (*Withdrawn*)

0523-96-R: The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 221 (Applicant) v. Emmons Welding Division of 1157777 Ontario Limited and Eastern Welding (Respondents) (*Endorsed Settlement*)

0958-96-R: The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Par Mechanical Ltd. and Capricorn Mechanical Limited (Respondents) (*Granted*)

0967-96-R: Sheet Metal Workers' International Association, Local 562 (Applicant) v. Walden Roofing & Sheet Metal Co. Limited and Nedlaw Roofing Limited (Respondents) (*Withdrawn*)

0968-96-R: Sheet Metal Workers' International Association, Local 562 (Applicant) v. Walden Roofing & Sheet Metal Co. Limited Conestoga Roofing & Sheet Metal Ltd. (Respondents) (*Withdrawn*)

1100-96-R: International Union of Bricklayers and Allied Craftsmen, Local 28 (Applicant) v. G&G Masonry, Division of 970512 Ontario Inc. and Harvard Construction Inc. (Respondents) (*Granted*)

1249-96-R: Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Siding I.P.E. Limited; Siding Adiv Ltd; Jay-Face Aluminum Ltd. (Respondents) (*Terminated*)

1518-96-R: United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Dante Gasparotto Limited ("DGL"), Panontin Construction Limited ("PCL"), Gasparotto/Panontin Construction Ltd. ("GPCL") (Respondents) (*Withdrawn*)

UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)

3267-95-R: United Steelworkers of America (Applicant) v. Gencorp Canada Inc. (Respondent) (*Granted*)

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

0448-95-R: Shawn Joseph Arsenault (Applicant) v. International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario, Locals 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, 894, 1687 and 1739 (Respondent) v. Bytown Electrical Services Ltd. (Intervener)

Unit: "all electricians and electricians' apprentices in the employ of Bytown Electrical Services Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman" (1 employee in unit) (*Dismissed*)

3871-95-R; 3872-95-R: The Bay (Applicant) v. United Steelworkers of America (Respondent) (*Withdrawn*)

3905-95-R: Pinkerton's of Canada Limited (Applicant) v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) and its Locals Nos. 195, 199, 1090 and 2163 (Respondent) (*Withdrawn*)

1250-96-R: Eileen Almgren and Sandra Eaton (Applicants) v. IWA Canada, Local 2693, Industrial Wood & Allied Workers of Canada (Respondent) v. Hill's Greenhouses Ltd. (Intervener)

Unit: "all employees of Hill's Greenhouses Ltd. in the Municipality of Oliver, save and except manager, supervisors, office and sales staff and persons above the rank of supervisor" (40 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	54
Number of persons who cast ballots	45
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	14

1281-96-R; 1530-96-R; 1531-96-R: Dave Georgiou (Applicant) v. Local 280 of the International Beverage Dispensers' & Bartenders' Union of the Hotel & Restaurant Employees' & Bartenders' International Union (Respondent) v. 1153411 Ontario Inc. o/a The Wheat Sheaf (Intervener); David Georgiou (Applicant) v. Local 280 The International Beverage Dispensers Union (Respondent); Stan Tsimicalis (Applicant) v. Local 280 The International Beverage Dispensers Union (Respondent) (*Withdrawn*)

1287-96-R: Georges Charbonneau, Benoit Gadouas and Denis Schnupp on their own behalf and on behalf of a group of employees at S & S Electric, a Division of 1101370 Ontario Ltd. (Applicant) v. International Brotherhood of Electrical Workers, Local 586 (Respondent) v. S & S Electric, a Division of 1101370 Ontario Ltd. (Intervener) (*Dismissed*)

1290-96-R: Employees of Longlac Valu-Mart (Applicant) v. United Food and Commercial Workers, International Union, Local 175 (Respondent) v. Longlac Valu-Mart (Intervener)

Unit: "all employees of 1011069 Ontario Limited c.o.b. as Longlac Valu-Mart in the Town of Longlac, save and except Assistant Manager, persons above the rank of Assistant Manager and Bookkeeper" (17 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	12
Number of segregated ballots cast by persons whose names appear on voter's list	12
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	12

1405-96-R: Lester Hinkson (Applicant) v. Retail, Wholesale Canada, Canadian Service Sector, Division of United Steelworkers of America, Local 1000 (Respondent) v. J.S. MacClaren Enterprises Inc. (Intervener)

Unit: "all employees of T.L.C. Merchandising [now J.S. MacClaren Enterprises Inc.] in the City of Ingersoll, save and except Assistant Managers and persons above the rank of Assistant Manager" (30 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	29
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	21
Number of ballots marked in favour of respondent	11
Number of ballots marked against respondent	10

1408-96-R: Association des Professionnels du CEFCUT - APC (Applicant) v. Association des Professionnels du CEFCUT - APC (Respondent) v. Le conseil des écoles françaises de la communauté urbaine de Toronto (Intervener) (*Granted*)

1419-96-R: The Deck Hands/Ordinary Seaman aboard the Northern Belle ("Deck Hands") (Applicant) v. Seafarers International Union (United States) ("S.I.U.") (Respondent) v. Windsor Casino Limited (Intervener) (*Granted*)

1440-96-R: Lee Marshall (Applicant) v. Labourers International Union of North America, Local 1059 (Respondent) v. Hammerson Canada Inc. (Intervener)

Unit: "all employees of Hammerson Canada Inc. employed at Westmount Shopping Centre, 785 Wonderland Road South in the City of London, Ontario, save and except supervisor, office and clerical staff, engineering and technical, and sales staff" (40 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	40
Number of persons who cast ballots	36
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	18
Number of ballots marked against respondent	17

1455-96-R: Dominic Richichi (Applicant) v. International Association of Machinists and Aerospace Workers, Lodge 2332 (Respondent)

Unit: "all employees of Autofix Limited in the City of Sault Ste. Marie, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (0 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	2

1490-96-R: Employees of the Thousand Islands Tax/Duty Free Store Limited (Applicant) v. Ontario Liquor Board Employees' Union (Respondent)

Unit: "all employees of the Thousand Islands Tax/Duty Free Store Limited, at Lansdowne, Ontario, save and except Senior Supervisor, persons above the rank of Senior Supervisor, persons employed in a confidential

position as defined by the Ontario Labour Relations Act, persons regularly employed for not more than 24 hours per week and students who attend a recognized institute of learning on a full-time basis, provided they were employed during the period from December 15th to January 15th, during the Ontario March break or during the school vacation period" (23 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	4
Number of ballots marked against respondent	16
Number of ballots segregated and not counted	0

1501-96-R: Tara Ramnath (Applicant) v. Teamsters Local Union 419 (Respondent) v. Laidlaw Medical Services Ltd. (Intervener)

Unit: "all office and clerical employees of Laidlaw Medical Services Ltd. in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisors, and sales staff" (3 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	2

1520-96-R: Sherry White (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 1090 (Respondent) v. Lofthouse Brass Ltd. (Intervener)

Unit: "The bargaining unit includes the production employees located at 310 Hopkins Street, Whitby, and the Shipping & Receiving employees located at 320 Hopkins Street, Whitby, who are employed in the Cut-Off Department, the Press Shop, the Machine Shop, the Cleaning Department and the Packing Room, but does not include supervisors or clerical staff." (36 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	36
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of respondent	20
Number of ballots marked against respondent	12
Number of ballots segregated and not counted	2

1560-96-R: Jacques Belle Isle Wholesale Cash & Carry Limited (Applicant) v. United Food & Commercial Workers International Union (Respondent) (*Withdrawn*)

1591-96-R: David Georgiou (Applicant) v. Local 280 of the International Beverage Dispensers' & Bartenders' Union of the Hotel & Restaurant & Bartenders' Int'l Union (Respondent) v. 1153411 Ontario Inc. o/a The Wheat Sheaf (Intervener)

Unit: "all full-time and part-time male and female employees employed in the beverage departments in the licensed establishment hereto as tapmen, bartenders, beverage waiters (including waiters who operate automatic beer dispensers or other automatic dispensing equipment), bar boys and improvers and any other new classification relating to the serving of alcoholic beverages" (0 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	18
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Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	14

1592-96-R: Stan Tsimicalis (Applicant) v. Local 280 of the International Beverage Dispensers' & Bartenders' Union of the Hotel & Restaurant & Bartenders' Int'l Union (Respondent) v. 1153411 Ontario Inc. o/a The Wheat Sheaf (Intervener)

Unit: "all employees of Wheat Sheaf Tavern Limited in the Municipality of Metropolitan Toronto, save and except Manager, persons above the rank of Manager, hotel employees and employees in bargaining units for whom any trade union held bargaining rights as of June 7, 1994 specifically those employees covered by the collective agreement between the applicant and responding party effective September 1, 1993 to August 31, 1996" (0 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	4

1597-96-R: Richard Giddy (Applicant) v. Teamster's Union, Local 91 (Respondent) v. Anchor Concrete Products Limited (Intervener)

Unit: "all employees of Anchor Concrete Products Limited in the Corporation of the Township of Kingston save and except foreman, persons above the rank of foreman, clerical office and sales staff." (25 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of ballots marked against respondent	22

1782-96-R: 913719 Ontario Ltd., cob as Adults Only Video -(Stores #9-8-12) (Applicant) v. Retail Wholesale Canada Canadian Services Sector Division of United Steelworkers of America AFL-CIO-CLC Local 414 (Respondent) (*Withdrawn*)

1841-96-R: Bill Hendriks (Applicant) v. Teamsters Union Local 880 (Respondent) v. Blackwood-Gordon Ltd. (Intervener) (*Granted*)

APPLICATIONS FOR DECLARATION OF UNLAWFUL LOCKOUT

3709-95-U: Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Ed Mirvish Enterprises Ltd. c.o.b. as Ed's Chinese Restaurant, Ed's Italian Restaurant, Ed's Seafood Restaurant, Ed's Warehouse Restaurant, Old Ed's and Ed's Folly (Respondent) (*Withdrawn*)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

4659-94-U; 0884-96-U: Kerry Irving (Applicant) v. C.A.W. Local 199 (Respondent) v. General Motors of Canada Limited (Intervener) (*Withdrawn*)

0018-95-U; 0019-95-U; 0020-95-U; 0021-95-U: Valerie Woods (Applicant) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647 (Respondent) v. Becker Milk Company Limited (Intervener); Erma Ward (Applicant) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees,

Local Union No. 647 (Respondent) v. Becker Milk Company Limited (Intervener); Hilda Revalls (Applicant) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647 (Respondent) v. Becker Milk Company Limited (Intervener); Alice Woods (Applicant) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647 (Respondent) v. Becker Milk Company Limited (Intervener) (*Dismissed*)

0910-95-U: Glen Brydges (Applicant) v. Independent Paperworkers of Canada - Local 69 (Respondent) v. MacMillan Bathurst (Intervener) (*Withdrawn*)

0966-95-U: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Bytown Electrical Services Ltd. (Respondent) (*Granted*)

1790-95-U: Steve Warner (Applicant) v. Labourers' International Union of North America, Local 183 (Respondent) v. Modern Building Cleaning Inc. (Intervener) (*Dismissed*)

2124-95-U: Gerald Caza, Raymond Caza, Pierre Cote, Dan Dezan, Gilles Lachapelle (Building Maintenance Employees Schedule 'C', Canadian Union of Public Employees Local 1229) (Applicant) v. Canadian Union of Public Employees, Local 1229 (Respondent) v. The Timiskaming Board of Education (Intervener) (*Withdrawn*)

2586-95-U: David Como (Applicant) v. Canadian Union of Operating Engineers, Aluminum, Brick and Glass Workers International Union, AFL-CIO-CLC (Respondents) (*Withdrawn*)

3135-95-U: Canadian Telephone Employees' Association (Applicant) v. Tele-Direct (Publications) Inc. (Respondent) (*Withdrawn*)

3143-95-U: The Ontario Secondary School Teachers' Federation (Applicant) v. Muskoka Board of Education (Respondent) (*Dismissed*)

3334-95-U: Michelle Lourenco, Jennifer Denomy (Applicant) v. London and District Service Workers' Union, Local 220 (Respondent) (*Dismissed*)

3527-95-U: United Steelworkers of America (Applicant) v. Greenberg Stores Limited (Respondent) (*Withdrawn*)

3708-95-U: Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Ed Mirvish Enterprises Ltd. c.o.b. as Ed's Chinese Restaurant, Ed's Italian Restaurant, Ed's Seafood Restaurant, Ed's Warehouse Restaurant, Old Ed's and Ed's Folly (Respondent) (*Withdrawn*)

3878-95-U: Ontario Nurses' Association (Applicant) v. Corporation of the County of Elgin (Elgin Manor and Terrace Lodge) Harley Underhill, Pat Vandevenne, Fred Boyes (Respondent) (*Withdrawn*)

3940-95-U: Darryl B. Norman (Applicant) v. Canadian Auto Workers (C.A.W.) (Respondent) (*Dismissed*)

4165-95-U: Donna Marie Race (Applicant) v. CAW Local 199, Sandy O'Dell, Harold Stubbett, John Clout (Respondents) (*Dismissed*)

4241-95-U: Antonio Dionisio, Joao Dias, and John Cordeiro (Applicant) v. Labourers International Union of North America, Joseph S. Mancinelli and Rick Weiss (Respondent) (*Terminated*)

0110-96-U: The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 221 (Applicant) v. Centro Mechanical Inc. (Respondent) (*Granted*)

0115-96-U: Constancio Manaois (Applicant) v. IWA Canada Local 1-700 (Respondent) (*Withdrawn*)

0187-96-U: Iqbal Ahmed Quraishi (Applicant) v. Lily Cups Inc. and Graphic Communications International Union Local 100-M (Respondents) (*Dismissed*)

0208-96-U: Marek Szczesny, Richard Duke, Peter Yule, Dexter Howard, William J. Gushue, and James H. Yule (Applicant) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local Union No. 647, The Becker Milk Company Limited (Respondents) (*Dismissed*)

0285-96-U: Benny (Ben) P. Negridge (Applicant) v. United Food and Commercial Workers Union Local Local 709-3, United Food and Commercial Workers International Union (Respondents) v. National Meats, J.M. Schneiders Ltd. (Interveners) (*Granted*)

0343-96-U; 0344-96-U; 0345-96-U: Millicent Dixon (Applicant) v. S E I U, Local 204 (Respondents) v. Northwestern General Hospital (Intervener) (*Dismissed*)

0356-96-U: International Brotherhood of Painters and Allied Trades, Local Union 1819 (Glaziers) (Applicant) v. Balkan Glass Aluminum Inc. (Respondent) (*Granted*)

0473-96-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 512 (Applicant) v. Forbo Industries Inc. (Respondent) (*Withdrawn*)

0512-96-U: Service Employees Union, Local 663 (Applicant) v. Belleville General Hospital (North Hastings District Hospital) (Respondent) (*Withdrawn*)

0553-96-U: United Food and Commercial Workers International Union, Local 175 & 633 (Applicant) v. Banlake Associates Limited c.o.b. as Bancroft I.G.A. (Respondent) (*Granted*)

0576-96-U: Kelly Toole (Applicant) v. Retail Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America and Local 414 (Respondent) (*Withdrawn*)

0785-96-U: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647 (Applicant) v. Timbuktu Natural Foods (1995) Inc. (Respondent) (*Withdrawn*)

0846-96-U: Canadian Union of Public Employees and its Local 2424 (Applicant) v. Carleton University (Respondent) (*Endorsed Settlement*)

0973-96-U: Lawrence D. Moynahan (Applicant) v. United Food and Commercial Workers Union Local 459 (Respondent) v. H.J. Heinz Company of Canada Limited (Intervener) (*Dismissed*)

1017-96-U: Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 880 (Applicant) v. Windsor Ready Mix (Respondent) (*Endorsed Settlement*)

1047-96-U: Mr. Azim Babu Ramji (Applicant) v. Mr. Kati - Hotel Employee Restaurant Employee Union - Local 75 (Respondent) (*Withdrawn*)

1051-96-U: United Steelworkers of America (Applicant) v. CanAmera Foods (Respondent) (*Withdrawn*)

1064-96-U: John D. Currie (Applicant) v. United Steelworkers of America, Local 9042 - District 6 (Respondent) (*Terminated*)

1080-96-U: Network North, The Community Mental Health Group (Applicant) v. Ontario Public Service Employees Union and its Local 666 (Respondent) (*Withdrawn*)

1111-96-U: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Labourers' International Union of North America, and Labourers' International Union of North America, Local 183 (Respondents) (*Dismissed*)

1150-96-U: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. 630599 Ontario Limited c.o.b. as Domcan Acoustical Company, Steflou Wall System & Acoustical Company (Respondents) (*Granted*)

1158-96-U: John A. Keane (Applicant) v. Canadian Union of Public Employees Local 503 (Respondent) v. The Regional Municipality of Ottawa-Carleton, C.U.P.E. Local 2187 (Interveners) (*Withdrawn*)

1167-96-U: Ontario Pipe Trades Council and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 463 (Applicant) v. Process Industrial Company Inc. c.o.b. as Process Mechanical Installations (Respondent) (*Withdrawn*)

1173-96-U: Montel Braithwaite (Applicant) v. Hotel Employees Restaurant Employees Union, Local 75 (Respondent) (*Dismissed*)

1200-96-U: United Steelworkers of America (Applicant) v. Rideau View Country Club (Respondent) (*Withdrawn*)

1229-96-U: Cecil Cooray (Applicant) v. International Union, United Plant Guard Workers of America, Local 1962 (Respondent) v. Toronto Hospital (Intervener) (*Dismissed*)

1235-96-U: Christian Labour Association of Canada (Applicant) v. LensCrafters International Inc. (Respondent) (*Withdrawn*)

1240-96-U: United Steelworkers of America (Applicant) v. Mayhew & Peterson Inc. and Workplace Furniture Services Inc. (Respondents) (*Withdrawn*)

1262-96-U: Robert W. Branton (Applicant) v. K.S. Centoco Ltd. and Local 880 Teamsters Union (Respondents) (*Withdrawn*)

1269-96-U: United Steelworkers of America (Applicant) v. Ultra Metals Inc. and Enviro-Care Kruncher Corp. (Respondents) (*Withdrawn*)

1276-96-U: Ontario Public Service Employees Union (Applicant) v. County of Bruce General Hospital (Respondent) (*Withdrawn*)

1280-96-U: Michael B. Myers (Applicant) v. IWA Local 1-500 (Respondent) v. Premier Caskets Corporation (Intervener) (*Withdrawn*)

1321-96-U: Ontario Public Service Employees Union (Applicant) v. Canadian Mental Health Association (Kingston Branch) (Respondent) (*Withdrawn*)

1330-96-U: John J. Lewis (Applicant) v. International Brotherhood Of Electrical Workers IBEW Local Union 105 (Hamilton Ont) Canadian Administrator IBEW Canada (Respondent) (*Dismissed*)

1347-96-U: Christian Labour Association of Canada (Applicant) v. Beechwood Place Retirement Residences (International Care Corporation) (Respondent) (*Withdrawn*)

1362-96-U: Nicholas Guy Carmichael (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) (*Withdrawn*)

1380-96-U: United Steelworkers of America (Applicant) v. National Grocers Co. Ltd. c.o.b. as C.C.G. Security Inc. (Respondent) (*Withdrawn*)

1389-96-U: Stephen L. Wright (Applicant) v. American Federation of Grain Millers International AFL-CIO-CLC, Local 210 (Respondent) (*Dismissed*)

1460-96-U: Steven Lowe (Applicant) v. United Steelworker of America District 6 (Respondent) (*Withdrawn*)

1461-96-U: David Northey (Applicant) v. Burns International Security (Respondent) v. The International Union, United Plant Guard Workers of America, Local 1956 (Intervener) (*Withdrawn*)

1469-96-U; 1470-96-U: Henderikus (Rick) Wassing (Applicant) v. Teamsters Union Local #647 (Respondent); Henderikus (Rick) Wassing (Applicant) v. Weston Bakeries Ltd. (Sudbury) (Respondent) (*Withdrawn*)

1472-96-U: Brian Hansen (Applicant) v. Three County Recycling (Respondent) (*Withdrawn*)

1480-96-U: Paul Horvatic (Applicant) v. Joe de Wit Business Manager, Local 95 (Respondent) v. E.S. Fox Limited (Intervener) (*Terminated*)

1510-96-U: Mr. Gordon Miller (Applicant) v. Mr. Plutarco Pacheco (Respondent) (*Withdrawn*)

1529-96-U: United Food and Commercial Workers International Union (Applicant) v. Cold Water Fisheries Inc. (Respondent) (*Withdrawn*)

1579-96-U: Allan A Wilson (Applicant) v. Goodyear Canada (Respondent) (*Dismissed*)

1617-96-U: Palwinder Singh Paul (Applicant) v. Centre Bakery (Respondent) (*Dismissed*)

1618-96-U: Bob Geromette (Applicant) v. United Food & Commercial Workers International Union - Local 175 (Respondent) (*Dismissed*)

1642-96-U: Teamsters Local Union 91 (Applicant) v. 1029959 Ontario Inc. o/a Macartney Farms (Respondent) (*Withdrawn*)

1648-96-U: Karl Munchgesang (Applicant) v. Weston Bakery (Respondent) (*Dismissed*)

1765-96-U: Peter Dwyer (Applicant) v. General Motors of Canada, Oshawa (Respondent) (*Dismissed*)

1766-96-U: London and District Service Workers Union, Local 220 (Applicant) v. Kitchener-Waterloo Hospital (Respondent) (*Withdrawn*)

APPLICATION FOR INTERIM ORDER

1541-96-M: Metro Civic Employees' Union, Local 43 (Applicant) v. The City of Toronto Non-Profit Housing Corporation (Cityhome) (Respondent) (*Dismissed*)

1726-96-M: Canadian Union of Public Employees, Local 1287 (Applicant) v. The Regional Municipality of Niagara (Respondent) (*Granted*)

APPLICATIONS FOR RELIGIOUS EXEMPTION

1448-96-M: Karl S. McCormack (Applicant) v. North York Civic Employees Union Local 94, The Corporation of the City of North York (Respondents) (*Withdrawn*)

TRUSTEESHIP

4229-95-T: Labourers International Union of North America (Applicant) v. Labourers' International Union of North America, Local 183 (Respondent) (*Terminated*)

FINANCIAL STATEMENT

0831-95-M: Mr. Robert Martin (Applicant) v. Canadian Union of Public Employees Local 3014 (Respondent) (*Withdrawn*)

JURISDICTIONAL DISPUTES

1162-96-JD: International Brotherhood of Painters and Allied Trades, Local 1819 (Applicant) v. International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 and Sherwood Windows Limited and Dack Construction Ltd. (Respondents) (*Withdrawn*)

1493-96-JD: Service Employees Union, Local 183 (Applicant) v. Belleville General Hospital (Respondent) (*Withdrawn*)

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

1356-96-M: The Employees' Association of K-Mart (Canada) (Applicant) v. KMart Canada Limited (Respondent) (*Withdrawn*)

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

0789-95-OH: Bruce Kelly (Applicant) v. Zalev Brother Limited (Respondent) (*Dismissed*)

0286-96-OH: (Peter) Cheuk Cheung Ng (Applicant) v. CCL Custom Manufacturing, Rexdale Plant (Respondent) (*Withdrawn*)

0433-96-OH: Della Marie Springer (Applicant) v. John Smith and Canadian Timken, Limited (Respondent) (*Withdrawn*)

0529-96-OH: Paul Clugston and CAW Local 222 (Applicant) v. General Motors Limited of Canada Limited, Robert Doble and Bob Miles (Respondent) (*Dismissed*)

0544-96-OH: James Bacon (Applicant) v. York Region Board of Education (Respondent) (*Withdrawn*)

0585-96-OH: Rick Rzeczycki (Applicant) v. Lear Corporation (Respondent) (*Withdrawn*)

0718-96-OH: Diane Reid (Applicant) v. Workers' Compensation Board and Brenda Jeannette (Respondent) (*Withdrawn*)

1188-96-OH: Kelly C. Nishimura (Applicant) v. West Hill Community Services (Respondent) (*Withdrawn*)

1190-96-OH: Dean Wood (Applicant) v. Key Direct Marketing Services, a division of Walmsley Graphics Inc., A.K.A. Key Interactive Marketing (Respondent) (*Withdrawn*)

1237-96-OH: Shelly Stiles (Applicant) v. Horizon Plastics Company Ltd. (Respondent) v. United Food and Commercial Workers International Union (Intervener) (*Dismissed*)

1253-96-OH: A. Sonya Gaskell (Applicant) v. Cecconi Simone Inc. (Respondent) (*Withdrawn*)

1471-96-OH: Henderikus (Rick) Wassing (Applicant) v. Weston Bakeries Ltd. (Sudbury) (Respondent) (*Withdrawn*)

1484-96-OH: Ed Smith (Applicant) v. A Guard Dog Security Service Limited (Respondent) (*Withdrawn*)

1565-96-OH: Mark J. Breau (Applicant) v. Nada (Nancy) & George MacKay (Respondent) (*Withdrawn*)

CONSTRUCTION INDUSTRY GRIEVANCES

3262-91-G; 0752-92-G; 3641-94-G; 0419-96-G; 0420-96-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Bren Electrical Contractors Limited (Respondent); International Brotherhood of Electrical

Workers, Local 353 (Applicant) v. Torwest Electric Limited (Respondent); International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Bren Electrical Contractors Limited, Torwest Electric Ltd. and Nuway Electric Ltd. (Respondents); International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Nuway Electric Ltd. (Respondent); International Brotherhood of Electrical Workers, Local 353 and International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Nuway Electric Ltd. (Respondent) (*Endorsed Settlement*)

0737-94-G: The Ontario Allied Construction Trades Council and Labourers' International Union of North America, Local 1059 (Applicant) v. Ontario Hydro and Electrical Power Systems Construction Association (Respondents) (*Terminated*)

2260-95-G: Sheet Metal Workers' International Association, Local Union No. 30 (Applicant) v. Associated Mechanical Systems Ltd. (Respondent) (*Granted*)

2655-95-G: International Association of Bridge, Structural and Ornamental Iron Workers, Local 759 (Applicant) v. PCL Constructors Prairie Inc. (Respondent) (*Withdrawn*)

2714-95-G: Labourers' International Union of North America, Local 1081 (Applicant) v. Traugott Construction (Kitchener) Limited (Respondent) (*Withdrawn*)

2976-95-G: Sheet Metal Workers' International Association, Local 397 (Applicant) v. J.L.P. Construction and Electrical Power Systems Construction Association (Respondents) (*Withdrawn*)

0354-96-G: Sheet Metal Workers' International Association, Local 473 (Applicant) v. CGS Group Ltd., Moore Air Equipment Inc. (Respondents) (*Withdrawn*)

0522-96-G: The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 221 (Applicant) v. Emmons Welding Division of 1157777 Ontario Limited and Eastern Welding and Fabricating Limited (Respondents) (*Endorsed Settlement*)

0565-96-G: Labourers' International Union of North America, Local 625 (Applicant) v. The Board of Education for the City of Windsor (Respondent) (*Dismissed*)

0755-96-G: Sheet Metal Workers' International Association, Local 539 (Applicant) v. A.T.S. Erectors (Respondent) (*Withdrawn*)

0823-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. Royal Masonry (Respondent) (*Withdrawn*)

0829-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. Sky Bright Masonry Inc. (Respondent) (*Withdrawn*)

0937-96-G: Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. Eldom Drywall Ltd. (Respondent) (*Granted*)

0983-96-G: International Brotherhood of Painters and Allied Trades, Local Union 1819 (Applicant) v. A. F. G. Industries Ltd. (Respondent) (*Withdrawn*)

1101-96-G: International Union of Bricklayers and Allied Craftsmen, Local 28 (Applicant) v. G&G Masonry, Division of 970512 Ontario Inc. and Harvard Construction Inc. (Respondents) (*Endorsed Settlement*)

1197-96-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Kascon Corporation; Kascom Consultants Limited (Respondents) (*Granted*)

1206-96-G: Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. Marin Contracting/New Generation Drywall (Respondent) (*Withdrawn*)

1244-96-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. The Board of Governors of Exhibition Place (Respondent) (*Withdrawn*)

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*Ontario Labour Relations Board,
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M7A 1V4*

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ONTARIO LABOUR RELATIONS BOARD REPORTS

November/December 1996



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**A Bimonthly Series of Decisions from the
Ontario Labour Relations Board**

Cited [1996] OLRB REP. NOVEMBER/DECEMBER

EDITOR: RON LEBI

Selected decisions of particular reference value are
also reported in *Canadian Labour Relations Boards
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1935-96-R International Association of Machinists and Aerospace Workers, Applicant v. Alarm Control Center Inc., Responding Party

Certification - Labour Relations Act not applying to full-time firefighters - Board not accepting employer's argument that union's certification application should be dismissed because its employees are full-time fire-fighters within meaning of Fire Departments Act - Board not satisfied that employer's employees assigned exclusively to fire protection or fire prevention duties

BEFORE: *Bram Herlich*, Vice-Chair

APPEARANCES: *Pat Murphy, Walter Brown, Sherri Lynch and Paul Allan* for the applicant; *Bob Wright and Victor Harding* for the responding party.

DECISION OF THE BOARD; November 5, 1996

1. This is an application for certification. A representation vote was held and the ballot box had been sealed. At the request and on the agreement of the parties, I dealt with an issue raised by the responding party employer who argued that most, though not all, of its employees are "full-time firefighters" within the meaning of the *Fire Departments Act* (the "FDA") to whom the *Labour Relations Act, 1995* does not apply by virtue of section 3(e) thereof.

2. After hearing brief and largely uncontested evidence on the point, I heard the parties' submissions, retired to consider same and subsequently delivered the following oral ruling:

Even accepting much of the theory advanced by the employer, I am not persuaded that the employees in question are "full-time firefighters" within the meaning of the *Fire Departments Act* ("FDA").

The issue is not simply whether the employees perform critical fire protection or fire prevention duties not provided in any other fashion by the relevant municipalities. That fact appears clear and undisputed. That does not, however, in and of itself, establish that the employees in question are "full-time firefighters" within the meaning of the FDA.

Even assuming that the contract between the responding party employer and the municipalities is a contract specifically contemplated and authorized under section 207(31) of the *Municipal Act*, and even assuming that the phrase "in the fire department" (see the definition of "full-time" firefighter in section 1 of the FDA) is to be read as potentially including persons not employed by the fire department, I am still not persuaded that the employees in question are "full-time firefighters" within the meaning of the FDA. To meet the terms of the definition, a person must be assigned exclusively to fire protection or fire prevention duties. While duties related to the contract with the municipalities are given highest priority, it was not disputed that the employees in question are also responsible for monitoring fire alarms for private commercial and residential clients of the responding party employer, duties which are conceded not to fall within the meaning of fire protection or fire prevention under the FDA.

I am therefore not satisfied that the employees in question are assigned *exclusively* to fire protection or fire prevention duties within the meaning of the FDA. They are therefore not "full-time firefighters" within the meaning of the FDA and are consequently, not, on that basis, excluded from the application of the *Labour Relations Act, 1995*.

3. After this ruling was delivered, the parties met with a Labour Relations Officer to further discuss other issues remaining in dispute.

4. As a result of those discussions, the parties were able, with two exceptions, to determine which ballots ought to be counted. Unfortunately, the margin of difference between those who voted for and against the applicant was sufficiently narrow that it appears the Board will have to resolve the disputed status of the two individuals whose ballots have remained sealed.

5. After further meetings with the Labour Relations Officer and the Vice-Chair, the parties agreed to adjourn these matters to November 12, 1996, in the "Board Room", 6th Floor, 400 University Avenue, Toronto, Ontario, at 9:30 a.m. at which time they will be heard from day to day (excluding Fridays and holidays) until their conclusion. The parties were advised, understood and agreed that in order to accommodate their scheduling requests, this matter will, in all likelihood, be heard by a different Vice-Chair or panel of the Board.

2437-96-R International Association of Machinists and Aerospace Workers, Applicant v. B. A. Banknote, a division of Quebecor Printing Inc., Responding Party

Certification - Practice and Procedure - Representation Vote - Security Guard - Employer objecting to union certification application under section 14(2) of the Act on basis that union admits to membership persons who are not guards - Employer requesting that ballot box be sealed - Board determining not to seal ballot box, but that employer's objection under section 14(2) of the Act should be considered by Board at hearing scheduled for application

BEFORE: *Laura Trachuk*, Vice-Chair, and Board Members *S. C. Laing* and *R. R. Montague*.

DECISION OF THE BOARD; November 15, 1996

1. This is an application for certification.
2. The Board finds that the applicant is a trade union within the meaning of section 1(1) of the *Labour Relations Act, 1995*.
3. It appears to the Board on an examination of the evidence before it, that not less than forty per cent of the individuals in the bargaining unit proposed in the application for certification were members of the union at the time the application was made.
4. The Board directs that a representation vote be taken of the individuals in the following voting constituency:

all security guards employed by B A Banknote, a division of Quebecor Printing Inc. in the City of Ottawa.
5. The vote will be held on November 20, 1996. Other vote arrangements will be as determined by the Registrar and set out on the attached "Notice of Vote and of Hearing".
6. All individuals who had an employment relationship with the responding party in the voting constituency on November 13, 1996, the certification application filing date, are eligible to vote. Employees having an employment relationship on November 13, 1996, the certification application filing date, include employees who were not at work on that date, so long as there is a reasonable expectation of their return to employment.

7. There is a dispute between the parties as to whether or not full-time and part-time employees should be included in the same bargaining unit. Ballots shall therefore be distributed and collected in such a fashion as to permit the Board to determine the vote results in either of the proposed bargaining units.

8. There may also be a dispute between the parties as to whether or not the position of supervisor and whether or not employees working at other than 975 Gladstone Avenue should be included in the bargaining unit. If any individual holding such a position wishes to cast a ballot, the individual shall identify himself or herself as occupying a disputed position and such individual shall then be entitled to cast a ballot. Any ballot cast by such an individual shall be segregated and not counted until the Board so orders or the parties agree.

9. The responding party objects to this application under section 14(2) of the Act on the basis that the applicant also admits to membership persons who are not guards. The responding party has requested that the ballot box be sealed. The Board has determined not to seal the ballot box, but the responding party's objection under section 14(2) will be considered by the Board at the hearing scheduled for this application.

10. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the responding party.

11. The responding party is directed to post copies of this decision and of the "Notice of Vote and of Hearing" adjacent to each of the posted copies of the "Notice to Employees of Application for Certification". These copies must remain posted for 30 days.

12. Any party or person who wishes to make representations to the Board about any issue remaining in dispute which relates to the application for certification, including any matters relating to the representation vote, must file a detailed statement of representations with the Board and deliver it to the other parties, so that it is received by the Board within seven days (excluding Saturdays, Sundays and holidays on which the Board is closed) of the date on which the vote is taken.

13. The matter is referred to the Registrar.

1831-96-R International Brotherhood of Electrical Workers, Local 353, Applicant v. B & B Electric Co. Division of Electrobauer Systems Limited and/or Electrobauer Limited, Responding Party

Certification - Construction Industry - Employee - Natural Justice - Reconsideration - Representation Vote - Settlement - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting

that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing

BEFORE: *G. T. Surdykowski*, Vice-Chair, and Board Members *W. N. Fraser* and *G. McMenemy*.

DECISION OF THE BOARD; December 4, 1996

I

1. This is an application for certification made under the construction industry provisions of the *Labour Relations Act, 1995*.

2. By decision dated October 28, 1996, the Board (differently constituted in part) directed that a representation vote be taken on November 1, 1996 in accordance with Minutes of Settlement dated October 21, 1996 between the applicant and the responding employer, filed, as follows:

Before the Ontario Labour Relations Board

Board File #1831-96-R

Between:

International Brotherhood of Electrical Workers, Local 353

Applicant

- and -

B & B Electric Co. Division of Electrobauer Systems Limited

Minutes of Settlement

The parties agree to the following as full settlement of the above-noted matter:

- (1) a vote in the above-noted matter will be held on Friday, November 1, 1996 between 7 am and 7:45 am at the premises of the Responding Party, 258 Toryork Dr. Weston, Ontario.
- (2) Voters list is as follows:
 - (i) Arbic, Craig E.
 - (2) Barr, Greg A.
 - (3) Chircop, Joseph
 - (4) Gardner, Gordon N.
 - (5) Gulli, Frank
- (3) scrutineers and agents for the count are as follows:

Applicant: Larry Venning

Respondent: Frank Sorichetti
- (4) the Responding Party agrees to allow the Applicant to hold a meeting among the eligible voters on Wednesday, October 30, 1996, between 4 pm and 5 pm at the Responding Party's premises. The Responding Party agrees that no one other than the eligible employees and representatives of the applicant shall be present at the meeting and without limiting the generality of the foregoing, no members of management including

Michael Bauer shall be present. The Applicant agrees that any action taken by the Responding Party to implement and comply with these minutes of settlement will not violate the Act.

- (5) the Responding Party shall deliver a cheque in the amount of \$750.00 to the Applicant's offices (to the attn: of L. Venning) no later than Thursday, October 24, 1996 in full and final settlement of this matter.
- (6) the Board's notices for the taking of the Representation vote will be immediately posted.

Dated at Toronto this 21st day of October 1996.

("B. Fishbein")

For the Applicant

("U. Bauer")

For the Responding Party

3. The vote was held as directed on November 1, 1996. All five persons whom the applicant and employer had agreed were eligible to do so did in fact cast ballots. Three ballots were marked in favour of the applicant and two were marked against it.

4. The applicant requests that the appropriate certificates issue in accordance with the results of the vote, a result which would normally follow.

5. However, it appears that after the vote was taken and the results announced, the employer retained counsel. In written representations made by letter dated November 13, 1996, the employer, through its counsel, requests that the vote taken November 1, 1996 be declared "null and void". Although it is not entirely clear what the employer asserts should happen then, it appears that the employer's position is that the application should be reprocessed. In the alternative, the employer requests that the Board order an additional vote to determine the true wishes of the employees, under section 111(5) of the Act.

6. In addition, by letters from counsel dated November 13 and November 20, 1996, two individuals request a hearing and seek relief as follows:

1. An order adding my clients as interested parties to those proceedings;
2. An order that my clients be provided with copies of all existing and future documents filed with the Board in regard to this matter;
3. An order that the above-mentioned October 21, 1996, Minutes of Settlement are unenforceable as they were the result of negotiations which resulted from a process that had failed to provide proper advance notice to my clients and failed to permit my clients to participate in the process;
4. An order setting aside the Board's October 28, 1996, decision as it was based upon the above-mentioned defective Minutes of Settlement and failed to include, as required by the *Labour Relations Act, 1995*, my clients as eligible voters;
5. An order, pursuant to subsection 111(5) of the *Labour Relations Act, 1995* directing that my clients be added to the voting list and that a new representation vote be conducted, at which time my clients will be entitled to cast their secret ballots on the question whether the employees of the responding party wish to [sic] represented by the applicant in their employment relations with the responding party.

7. In its November 13, 1996 submissions, the employer indicated that it intended to apply for reconsideration of the Board's October 28, 1996 decision. It is also apparent that the employer assumes

that the Board will hold a hearing with respect to its request that the November 1, 1996 vote be declared null and void and its request for reconsideration.

8. On November 26, 1996, the Board received formal requests for reconsideration under section 114(1) of the Act from both the responding employer and the two individuals. Although the employer and the two individuals both make some additional assertions of fact and additional submissions, both requests for reconsideration are substantially the same as the aforesaid letter representations, and both request substantially the same relief.

9. Normally, an application for reconsideration is dealt with by the same panel which issued the decision with respect to which reconsideration is sought. However, that is not invariably the case, and in circumstances in which the original decision was based entirely on materials filed by the parties, or the original panel cannot be re-constituted either at all or sufficiently quickly to deal with the matter as quickly as the circumstances appear to require, another panel may deal with such a request. In this case, the October 28, 1996 decision was based entirely on the materials filed by the parties, including (and most significantly) the Minutes of Settlement set out above. All of these materials are also before this panel. Further, this is an application for certification which both by its nature and under the scheme of the Act, and having regard to the issues raised, requires immediate attention and Vice-Chair Stamp, the Vice-Chair who along with the same two Board Members as herein issued the October 28, 1996 decision, is not immediately available. In the circumstances, this panel considers it appropriate to deal with the matter.

10. Further, the Board is satisfied that the issues raised in the written representations with respect to the vote and the requests for reconsideration can be disposed of on the basis of the written materials made, without an oral hearing and the delay which holding such a hearing would entail, unnecessarily in our view.

II

11. We turn first to the representations of the two individuals. They challenge the October 21, 1996 Minutes of Settlement as aforesaid and the October 28, 1996 decision which is based on them. In essence, they assert that:

- (a) they are employees of the responding employer;
- (b) the Board, the applicant and the employer failed to give them proper notice of the proceedings or of the November 1, 1996 vote;
- (c) as a consequence of the Board's October 28, 1996 decision and the subsequent vote on November 1, 1996, they discovered that their rights had been affected, and, more specifically, that they would not be permitted to participate in the vote.

12. This application was filed on September 24, 1996. With its application, the applicant filed the requisite Form T-9 "Certificate of Delivery of Application for Certification (Construction Industry)", certifying that it had delivered copies of the application, a response form for the employer, a copy of Information Bulletin No. 2, and a copy of the Board's Interim Certification and Termination Rules to the responding employer. In its submissions, the employer asserts that it did not receive all of these documents, or other documents required by the Board's Interim Rules (see below). However, there is no suggestion that the employer did not receive a completed copy of the application, Information Bulletin No. 2 and a copy of the Board's Interim Certification and Termination Rules.

13. Subsequently, by decision dated September 27, 1996, a Board panel chaired by Vice-Chair Gee, directed that a hearing be held on October 21, 1996, and that the issue of when or if a representation vote should be held be dealt with at the hearing, unless the matter was dealt with or otherwise terminated prior to the hearing. By decision dated October 2, 1996, that same panel ordered the responding employer to post a copy of the application, and copies of the September 27 and October 2, 1996 decisions, "in a location or locations where they are most likely to come to the attention of those individuals who may be affected by the application." The Board went on to say that:

3. Any employee who may be affected by this application who wishes to make a statement to the Board about the application must send a written statement to the Board, setting out their name(s), address and phone number, the file number that appears at the top of this decision, the names of the applicant and responding party, and a detailed statement of what the employee wants the Board to consider. Such statement must be received by the Board no later than October 11, 1996.

4. Any employee who files a written statement with the Board must send a copy of the statement to the applicant and responding party such that it is received by the applicant and responding party no later than October 11, 1996. The correct names and addresses of both appear on the Application for Certification posted beside this decision.

5. Any employee who sends a statement to the Board, must attend the hearing scheduled for October 21, 1996, or send someone to speak on their behalf, or the Board may decide the application without providing any further notice to such employee or considering the written submission filed.

14. On October 21, 1996, the applicant and the employer engaged in discussions and, apparently with the assistance of a Board Officer, entered into the aforesaid Minutes of Settlement.

15. Subsequently, the Board issued the October 28, 1996 decision. In accordance with the Minutes of Settlement between the applicant and the employer, the Board directed that a representation vote be held of the individuals they had agreed constituted the voting constituency of November 1, 1996. Also in that decision, the Board directed that:

11. Any party or person who wishes to make representations to the Board about any issue relating to the application for certification which remains in dispute, must file a detailed statement of representations and all material facts upon which they rely with the Board and deliver it to the other parties, so that it is received within seven days (excluding Saturdays, Sundays and holidays on which the Board is closed) of the date on which the vote is taken.

16. This decision was sent to the employer along with the Form T-10 Notice concerning the application and the vote. This notice did several things. It advised all concerned that the applicant had applied to represent employees of the employer, it referred employees to a copy of the application posted beside the notice which describes the application, including the bargaining unit of employees the applicant seeks to represent, and, in large bold type, advised that "The Board has directed that a representation vote be held. A copy of the Board's decision is attached."

17. The Notice described the voting constituency agreed to by the applicant and the employer by listing the names of the individuals who they had agreed were eligible to vote, and then went on to say:

If you believe that you are eligible to vote, or have any question as to your eligibility to vote, you should attend at a polling place and identify yourself to the Board Officer conducting the vote. If eligibility to vote is unclear, or in dispute, you will be given an opportunity to mark a ballot, but it will be segregated, meaning it will be sealed in a separate envelope, until eligibility to vote has been determined.

18. The Notice then described when and where the vote would take place, how the vote would be conducted, the question which would be on the ballot, what could happen after the vote is held, and how statements with respect to the application were to be made to the Board.

19. It appears that the employer posted everything which the Board directed it to post: that is, copies of the application, the September 27 and October 2 and 28, 1996, decisions, and the Form T-10 Notice. There is no suggestion that it did not. However, the two individuals assert that Bauer was unaware of the application or of the vote until November 1, 1996, after the vote was held. In that respect, they assert that Bauer was not informed in either respect by his father (who on the representations of both the two individuals and of the responding employer is the principal/owner of the employer), and that he did not see the October 28, 1996 decision or the Form T-10 posting regarding the vote, which they assert was posted only at the employer's office and not at the job site where the bargaining unit employees were working during the material times.

20. On the facts alleged by the two individuals in Schedule "A" to counsel's November 13, 1996 representations and their request for reconsideration, it is easy to see how one of them (Pennington) might not have actually seen any postings prior to October 15, 1996 when he allegedly returned to work after an absence due to a compensable injury. However, even on these representations, Pennington had actual notice of the application of the October 28, 1996 decision and the vote by at least October 30, 1996.

21. With respect, it is difficult to believe that Bauer was unaware of this application, or of the vote, until after the vote was held on November 1, 1996. It seems quite unlikely that he would not have become aware of the application from his father, or from either Pennington or any of the employees who voted and therefor obviously had notice. But assuming that he did not, and assuming that all of the documents which were required to be were posted at the employer's office and not at the job site, we note that the two individuals plead as follows (in their request for reconsideration):

10. While working at the field office since the beginning of October, Bauer would, on average, attend at the Company's head office approximately three or four times per week. These attendances varied from week to week, however, and there have been times where Bauer would attend at the head office only once per week.
11. When Bauer attended at the had [sic] office since October 4, 1996, Bauer would typically attend at the head office for a visit lasting from 20 to 60 minutes. Typically, Bauer would attend at the office for a short period of time during the afternoon or at the end of the afternoon.

22. The relevant postings giving notice of the application and proceedings before the Board, and specifically the hearing (which turned into a meeting at which the October 21, 1996 Minutes of Settlement were entered into), were up for over two weeks prior to that date. How is it that in his one to four 20 to 60 minute attendances per week at the offices between the time the postings went up and October 21, 1996 Bauer did not see these postings? We think it more reasonable to infer that he did in fact see them.

23. But even if he did not, there was a reasonable opportunity for him to see the postings.

24. It should surprise no one that each and every person who might possibly be affected does not receive actual notice of each and every application for certification, or of each and every representation vote which is held, in a timely way. The Board, relying as it must on the trade union and employer involved in an application for certification to do the things which they are obliged by statute or directed by the Board to do, does what it can to bring the application and proceedings in it to the attention of the person who may be affected. However, it is readily apparent that time is of the essence and the "quick

vote in every case” certification system established under the Act (see *Burns International Security Services Limited*, [1996] OLRB Rep. March/April 192; *The Corporation of the City of Toronto*, [1996] OLRB Rep July/Aug. 552 (Board File No. 2603-95-R, decision dated July 3, 1996) and it is inevitable that not every person affected will receive actual notice in every application for certification. There are any number of reasons why affected persons, generally employees, may not receive actual notice. For example, it is entirely normal, particularly in the construction industry, for persons to be absent from the workplace for vacations, medical reasons, or for other reasons. No workable certification system can guarantee that everyone affected by an application for certification will receive actual notice of the application. This is particularly true in a fast vote in every case system like the one the Board is charged with administering under the Act.

25. Further, this is no different from other situations in which notice is given in a manner which does not include personal service and which therefore cannot guarantee actual notice to persons whose rights may be affected. For example, various kinds of legal notices are routinely published in newspapers, and in the Ontario Reports (which are not widely read by persons who are not legal professionals). More to the point, actual personal notice is not necessarily given to everyone who may be entitled to vote in Municipal, Provincial, Federal or other elections.

26. In this case, the relevant postings giving notice of this application were up for more than two weeks prior to October 21, 1996, and for nearly a month before the vote was held, well in excess of the times such postings are generally up before a vote, and well in excess of the time the Legislature has at least implicitly approved as being sufficient having regard to the vote based certification (and termination) system established under the Act, and specifically the direction in section 8(5) of the Act that wherever possible certification votes be held within 5 days of the making of an application.

27. In the circumstances of this case, including the apparent size of the employer, it is difficult to believe that Bauer was unaware of the application or vote until after the vote was held on November 1, 1996. On the facts alleged, it is clear that Pennington had actual notice of the application and of the vote by October 30, 1996, before the vote. It is therefore more probable than not that both individuals had timely notice of the application, proceedings and vote. However, even if they did not, the various documents relating to the application and proceedings were posted as directed by the Board in a manner in which Pennington and Bauer are deemed to have received proper notice.

28. In the result, the Board is satisfied that Pennington and Bauer (the two individuals who seek another vote), or either or them, could have filed a written statement with respect to the application in accordance with the Board’s October 2, 1996 decision. They did not do so. They could have, and they should have if they either had anything to say about the application or wanted to ensure that their interests were protected or represented, attended at the Board on October 21, 1996. Had they done so, they could have participated in the discussions which led to the Minutes of Settlement, which in turn led to the Board’s October 28, 1996 decision. They did not do so. Even if it is true as Bauer asserts that he did not attend at the employer’s office and therefore did not actually see the Board’s October 28, 1996 decision or the Form T-10 Notice regarding the vote, this was because of his own failure to make representations or attend at the Board on October 21, 1996. Accordingly, both Bauer and Pennington could have, and they should have, attended at the polling place established for the vote and requested an opportunity to cast a ballot. They failed to do this either. Having failed to do any of these things, it is not now open to them to challenge the proceedings before the Board, the October 28, 1996 decision of the Board, or the vote.

29. Further, it is apparent that Pennington was not at work in the bargaining unit at the time the application was made; that is, on the date of application. For the reasons given in *Ken Anderson Electric*

Inc., [1996] OLRB Rep. Sept./Oct. 846, (Board File No. 0550-96-R, decision dated September 18, 1996), he was therefore not eligible to vote in any event.

30. We observe that there may remain some dispute regarding Bauer's status as an "employee" within the meaning of the Act and whether or not he is someone who is included in the bargaining unit in this application. Counsel for Bauer asserts that it is not open to the applicant and the employer to agree that Bauer is not "employee", (which we observe is not necessarily the same as being an "employee of the company") when Bauer asserts that he is. With respect, we disagree. Under the *Labour Relations Act, 1995*, a trade union and an employer are entitled to make such an agreement. Whether or not a person who is the subject of such an agreement is bound by it will depend on the circumstances. For example, if a person who disagrees with such an agreement acts in a timely way s/ he may not be bound by it. But Bauer did not act in a timely way in this case. In any case, we note that the applicant's position (as set out in its November 19, 1996 letter of representations) is that he is not an "employee", and that it is therefor not seeking to represent him as an "employee" in the bargaining unit. It is apparent that Bauer does not wish to be represented by the applicant and that the applicant does not wish to represent him. In any case, there is no matter in dispute with respect to Bauer's "employee" status. Bauer, or the employer, could have raised that issue previously (indeed the employer did but abandoned it when it agreed to the October 21, 1996 Minutes of Settlement), but it is too late to do so now.

III

31. We now turn to the responding employer's request. In support of its request, the employer asserts that the Minutes of Settlement as aforesaid which were the basis for the Board's October 28, 1996 decision are "non-enforceable", that the IBEW failed to comply with the Board's Interim Rules regarding the serving of the relevant forms, and that the vote taken does not represent the true wishes of the "relevant" employees. The employer has filed 6 pages of representations in support of these assertions. Its request for reconsideration is 8 pages long.

32. We note that the employer's representations with respect to the applicant's unfair labour practice allegations are largely irrelevant. These formed no part of the basis for the Board's October 28, 1996 decision. Similarly, the employer's representations regarding what it alleges was improper conduct by representatives of the applicant *may* form the basis for other proceedings, but do not go to the root of the Board's October 28, 1996 decision, or suggest a *prima facie* case for relief under section 11(2) of the Act (in that respect, see, *Centro Mechanical Inc.*, [1996] OLRB Rep. Sept./Oct. 762, (Board File No. 3727-95-R, decision dated September 6, 1996). We note that both the *Centro* decision and the Board's earlier jurisprudence (albeit developed under previous versions of the Act) draw a distinction between the abilities of trade unions and employers to affect employment. It is far from clear that the facts now alleged by the employer would constitute a breach of the Act, either at all, or if they did that the Board would either reconsider a decision to grant a certificate, or revoke a certificate as part of the relief granted in an unfair labour practice complaint (see, *Bruno Plumbing & Contracting Inc.*, Board File No. 2037-94-R, October 24, 1994, unreported; *Can-Eng Metal Treating Ltd.*, [1988] OLRB Rep. May 444).

33. The employer concedes that it received notice of this application on September 24, 1996, the same day the application was filed with the Board. It asserts that it did not receive a response form, but instead received a Form T-20 "Application for Termination of Bargaining Rights, Construction Industry". The employer also asserts that it did not receive "other documents required by Interim Rule 43u". Counsel does not specify what "other documents", in addition to the appropriate response form, it asserts were not delivered as required by Interim Rule 43u.

34. Section 123 of the Act provides that:

123. No proceeding under this Act is invalid by reason of any defect of form or any technical irregularity and no proceeding shall be quashed or set aside if no substantial wrong or miscarriage of justice has occurred.

The applicant denies that it sent the employer any incorrect forms, or that it otherwise failed to comply with the Board's Interim Rules. But assuming that it did: what of it?

35. In its request for reconsideration, the employer relies upon "*Gerald E. Baird Contractor Ltd.*, [1983] OLRB Rep. Jan. 19" [sic] in support of its submission that the alleged failure of the applicant to deliver the appropriate documents to the employer is fatal to the application.

36. It is not clear whether the employer is referring to the decision in *Gerald E. Baird Contractor Ltd.* which is reported at [1979] OLRB Rep. Aug. 729, or to *Beatty-Hall Construction Co. Limited* which is reported at [1983] OLRB Rep. Jan. 19, but both decisions stand for the same proposition: that the Board will give no weight to membership evidence which is not supported by an appropriate declaration attesting to the adequacy and sufficiency of the membership evidence, with the result that an application for certification in which the declaration has not been filed will be dismissed.

37. Assuming that these decisions remain "good law" under the current Act (and it is far from clear that they do), failing to file with the Board material which the Act requires, or which the Board considers essential, is quite different from the failure alleged by the employer in this case. An application for certification can be dealt with and disposed of whether or not the employer concerned files anything, and whether or not anything which the employer does file is in the prescribed form. Although it is preferable for materials to be filed in the form prescribed by the Board, if only to ensure that all of the requisite information is provided in a manner which makes it readily accessible, the Board's practice is to accept materials filed in other than the prescribed form, so long as it is intelligible and is in substantial compliance with the requirements in the Board's Rules regarding the information which must be provided, unless another party can demonstrate real prejudice.

38. In this case, it is not alleged that the employer has been prejudiced. Nor is it apparent that it has been, or how it could have been, prejudiced even if what the employer alleges is true. The employer pleaded its response as it considered appropriate, and the matter proceeded on that basis. Further, having regard to the documents the employer either does not dispute or it is apparent it did receive it, the employer could have readily obtained whatever forms or documents it felt were required. However, the employer waited until after the vote was held, more than five weeks after it had notice of the application, to complain about this alleged deficiency.

39. The Board is satisfied that even if the applicant did send the employer an incorrect form, or failed to send it some other form(s), in the circumstances of this case this constitutes no more than a technical irregularity, and no substantial wrong or miscarriage of justice has occurred.

40. Part of the basis suggested for the employer's request with respect to the vote in this case appears to be that it did not have legal representation or advice, while the union did, and that the employer's representatives did not fully understand the employer's legal position or what they were getting into when they entered into the aforesaid Minutes of Settlement. Counsel specifically asserts that the Minutes of Settlement "were made through an inequality of bargaining power, and undue influence".

41. There is no merit to these assertions. The employer's representatives appear to be adults who operate in the business world. It is apparent from counsel's submissions and the materials before the Board that the employer had ample opportunity to seek and obtain legal advice with respect to the

application and its legal position prior to October 21, 1996. It is not clear why it chose not to do so, but that is not important. The fact is that the employer chose not to. The Board is a quasi-judicial administrative tribunal. It is not part of the Board's function to give legal advice to parties which are involved in proceedings before it. It may be stating the obvious, but given the adversarial nature of such proceedings, the union is under no obligation to do so either.

42. Parties to a proceeding before the Board are free to appear with or without counsel or other legal representation. The Board is sensitive to the need for it to be accessible to those who are unable or who do not wish to be represented by counsel or anyone else, and the Board is sensitive to the difficulties which an unrepresented party may face when it becomes involved in proceedings before the Board. Accordingly, the Board will generally take some time to explain its processes to an unrepresented party if it appears appropriate to do so, and will give an unrepresented party some leeway in the manner in which it conducts itself. But Board proceedings are not "free-for-alls". They are legal proceedings which are governed by the Act, the Board's Rules, and to the extent that the Board's Rules do not cover something, by the rules of fairness and natural justice. These Rules are there for the benefit and protection of all parties, and they apply to all parties, represented or not.

43. A party which participates in Board proceedings without representation, or without informing itself with respect to matters of practice, procedure, or law, must live with the consequences of doing so. No one can expect to be in a more advantageous position, procedurally or in law, because s/he chooses to proceed unrepresented or unadvised. Concomitantly, a party (in this case the applicant) cannot be criticized or in a worse position because it is represented by counsel.

44. Having chosen not to retain counsel or other representation or to obtain legal advice, the employer must bear the consequences of exercising that choice. It is now too late for the employer to say that it should have obtained legal advice, or to seek to subvert the certification process because it previously failed to do so. The employer cannot rely on its own failure to obtain legal advice to claim that it was disadvantaged.

45. With respect what actually occurred in this case, counsel makes certain assertions with respect to what at least two Board Officers said to the employer's representatives. These Officers were involved in a normal settlement process which is engaged in every proceeding before the Board. As a general matter, the Board does not entertain representations with respect to what was said to or by its Labour Relations Officers. To do so would be contrary to sections 119(4) and (5) of the Act, and would undermine an effective labour relations process which has a very high success rate. In any event, it does not appear that anything unusual or untoward occurred, and the employer knew or ought to have known what it was getting into.

46. In that respect, the employer was informed as follows:

- (1) In the Board's September 27, 1996 decision, the Board gave notice that a hearing would take place on October 21, 1996 *and that the hearing would continue day-to-day until finished* unless otherwise ordered by the Board (and also gave the location and starting time of the hearing).
- (2) The Board's October 2, 1996 decision indicated what the parties had to do with respect to the hearing.
- (3) Whether or not the employer received a telephone call from a Board Officer on October 18, 1996, which we accept that it probably did, the Board also sent the parties a letter dated October 18, 1996 as follows:

This will confirm that the hearing in this matter scheduled for October 21, 1996 is adjourned.

The parties will now meet with a Labour Relations Officer, on October 21, 1996, at the Board's Offices, 400 University Avenue, 3rd Floor, Toronto, Ontario commencing at 9:30 a.m.

In the event that this matter is not settled on October 21, 1996, the hearing will commence on October 22, 1996.

47. Accordingly, it is difficult to accept counsel's submission that the employer's representatives "did not understand [the October 21, 1996 meeting] to be a settlement meeting with IBEW, and did not prepare for such". Indeed, it is inconsistent with the assertion in the next sentence of counsel's representations (and repeated in the request for reconsideration) that they "believed that the IBEW clearly had no case, and believed that the meeting would simply be to end the proceeding". *Something* had to happen before the proceeding ended.

48. In any case, the employer pleads in that respect that:

s. Bauer and Leclair were told by the officer at the meeting that B & B could not obtain an adjournment of the hearing in order to obtain legal advice and that if they did not immediately enter into an agreement with IBEW there would be a hearing the next day. In effect, Rule 34 of the Board was misrepresented to Bauer.

t. Bauer was not advised by the Ministry of Labour that employees who were temporarily away from work could possibly be listed as eligible employees for the purposes of this proceeding, nor the potential ramifications of the proposed voting list stated in the Minutes of Settlements. Bucik told Bauer that the most he could hope for was a representation vote, but she did not advise him that he may have indeed been able to defeat the IBEW's application for certification without a vote straight out. Bucik told Bauer that he had nothing to fear concerning a vote given that the Board had received a statement from the employees that they did not wish to be represented by trade union.

u. B & B and IBEW entered into a Minutes of Settlement during the meeting on October 21, 1996. Pursuant to the Minutes of Settlement it was agreed between B & B and IBEW that there would be representation vote, with a restricted "voters" list which limited the number of eligible employees to five (5). Excluded were the following employees:

1. Michael Bauer (Journeyman Electrician)
2. Andrew Pennington (Journeyman Electrician)
3. Edward Casella Journeyman Electrician/working foreman)

v. Bauer was told by the officer that he had nothing to worry about in signing the Minutes of Settlement given that almost all of the employees had signed a declaration stating that they did not wish to the IBEW to be certified.

49. The Rule 34 referred to provides that:

34. The Board may adjourn a case if it considers that the adjournment is consistent with the purposes of the Act. The Board may adjourn on such terms as it considers advisable.

It does not follow that the Board readily adjourns matters before it (other than on agreement of the parties). Indeed, quite the contrary is true. It is the Board's long-standing practice and policy not to adjourn proceedings except in extraordinary circumstances or on agreement of the parties. No party is entitled to or can expect an adjournment of a proceeding of which it has had adequate notice for its convenience, or to obtain legal advice it had a reasonable opportunity to obtain beforehand (see, for example, *Ellis-Don Limited*, [1992] OLRB Rep. Sept. 999; *Re Flamboro Downs Holdings Ltd.* and

Teamsters Local 1879, (1979) 24 O.R. (2d) 400 (Ontario Div. Court)). Accordingly, even if the Officer did make statements to the effect alleged in paragraph “s” in (Schedule “A”) to the request for reconsideration, these were neither inaccurate nor contrary to Rule 34u. Further, and in any event, the employer could have refused to sign the October 21, 1996 or any other Minutes of Settlement, could have sought legal advice that day or evening, and could have asked the Board for an adjournment. It did none of these things.

50. It is not clear what counsel is getting at in paragraph “t”. The Board and the Ministry of Labour are not the same entity. In any event, neither the Board nor the Ministry (so far as we are aware) give legal advice with respect to proceedings before the Board. Officers may offer practical “advice” or suggestions in the course of their efforts to assist parties to a settlement, but it is difficult to see how they could do their job if they did not. In any event, if the Officer said the things alleged in paragraph “t” (and the Board could properly consider them), she was correct. The best that the employer could hope for was a representation vote. As the Board described in *Burns International Security Services Limited*, *supra*, and *The Corporation of the City of Toronto*, *supra*, the current Act contains a vote-based certification system. The employee “statements” (or “petitions” as they have commonly been known) to which counsel refers may have been relevant under previous versions of the Act but they are irrelevant under the current Act.

51. Similarly, even if a “you have nothing to worry about” comment was made as alleged, it was or should have been clear that the employees which the employer agreed were entitled to would be given an opportunity to vote, as the Act contemplates. Whether or not the employer had anything “to worry about”, no one can predict or guarantee the results of a vote. There is nothing in any of the representations before the Board which suggests that there was any good reason not to hold a vote in this case, in accordance with the “fast vote in every case” direction in the Act.

52. Nor does any of this amount to a situation where an “officially induced error” (submitted by counsel in paragraph “z” of Schedule “A” to the employer’s request for reconsideration) could be found, assuming that such a concept even applies to Labour Relations Officers designated under the Act to try to effect the settlement of a matter before the Board.

53. Counsel asserts that in the Minutes of Settlement the employer agreed to exclude three persons which it now asserts are employees who should have been allowed to vote. He submits that:

The said employees had no knowledge that B & B [the employer] would have and was going to purportedly bargain away their rights to, *inter alia* a representation vote. Indeed, Bauer [a different Mr. Bauer] and LeClair did not believe that they would be making a deal with IBEW on October 21, 1996, nor even contemplated making a deal.

54. First of all, it is not open to the employer to now complain that it “bargained away” someone else’s rights.

55. Second, what did the employer’s representatives think they were doing when they signed Minutes of *Settlement* on October 21, 1996 if they were not making a “deal”?

56. Third, when did this revelation which the employer now asserts come to its representatives? It appears that the employer neither said nor did anything between October 21st and the Board’s October 28, 1996 decision 7 days later. Nor did it do or say anything between October 28, 1996 and the taking of the vote on November 1, 1996. The employer made no complaint at the vote. Indeed, its representatives signed a Certificate of Conduct of Election with respect to the vote as follows:

CERTIFICATION OF CONDUCT OF ELECTION

DATE OF ELECTION - Friday, November 1, 1996

PLACE OF ELECTION - Weston, Ontario

WE the undersigned, acted as scrutineers for the parties herein in the conduct of the balloting at the date and place above mentioned. We certify that the balloting was fairly conducted and that all eligible voters were given an opportunity to cast their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

Not until after the vote, and after the ballots cast had been counted and it was revealed that the applicant had won the vote (and even then it apparently was not until several days later), that it occurred to the employer to even seek legal advice.

57. With hindsight and the results of the vote in aid, it may be that the employer now considers that it was imprudent for it to enter into the Minutes of Settlement which led to the vote, and that it would not, in hindsight, have entered into the Minutes of Settlement had it known what would occur or had it obtained legal advice. But the employer has made its “deal”. It would seriously undermine the Board’s settlement process, and it would be patently unfair to the applicant, to permit the employer to resile from its agreement unless there was good reason to do so. The vast majority of matters which come before the Board are settled or expeditiously litigated on the basis of agreements made between the parties, very often with the assistance of a Board Officer, and which agreements typically are incorporated in or form the basis for a Board decision in the matter, which decision is “final and conclusive for all purposes” (section 114(1) of the Act). To allow a party to resile from an agreement because it acted without legal advice, or because it has reconsidered its position or “changed its mind”, without good reason, would make a mockery of the Board and its processes, and would substantially retard and prejudice the timely resolution of labour relations disputes which both the Board and the courts have long recognized should be determined expeditiously (see, for example, *Runnymede Development Corporation Limited*, [1987] OLRB Rep. Oct. 1305; *Journal Publishing Co. of Ottawa Ltd. et al. v. Ontario Newspaper Guild, Local 205 et al.* [1977] 1 A.C.W.S. 817 (Ontario Court of Appeal); *Dayco (Canada) Ltd. v. CAW - Canada et al.*, [1993] 2 S.C.R. 230 (Supreme Court of Canada)).

58. In this case, the employer has not made out a *prima facie* case of unfairness or undue influence. It had ample opportunity to obtain legal representation or advice if it wished to do so. It had ample opportunity to inform itself, either by simply reading what had been sent to it, or otherwise. It knew or ought to have known what the process was and what it was doing when it entered into the Minutes of Settlement. There is no guarantee of equality of bargaining power, either before the Board or elsewhere. Further, it appears that the employer is now attempting to avoid the ultimate result of its own choices and conduct. In order to do justice between the parties in the circumstances of this case, it is appropriate to give effect to the October 21, 1996 Minutes of Settlement.

59. There is no reason to grant the employer’s requests and the Board is not satisfied that there is any other good reason either to declare the October 21, 1996 Minutes of Settlement between the parties null and void, or to permit the employer to resile from those Minutes of Settlement.

60. In that respect, the employer’s representations regarding Bauer, Pennington, and a third person, Edward Casella, add nothing to the representations made by counsel for Bauer and Pennington. Just as Pennington was not entitled to vote in any event because he was not at work in the bargaining unit on the date of application, Casella was not at work on that day and was not entitled to vote either. Indeed, it appears that he still has not returned to work, and on any test ever applied by the Board in any case (construction or non-construction), Casella would not have been entitled to vote in this application.

61. In the result, the Board is not satisfied that there is any reason to grant any of the requests made by either the two individuals or by the employer, or for the Board to otherwise reconsider the October 28, 1996 decision. Nor is there any good reason not to give effect to the results of the vote.

IV

62. On the taking of the representation vote on November 1, 1996 as directed by the Board, more than fifty per cent of the ballots cast were marked in favour of the applicant.

63. In its October 28, 1996 decision, the Board found the following bargaining unit to be appropriate for collective bargaining:

all electricians and electricians' apprentices in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all electricians and electricians' apprentices in the employ of the responding party in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman.

64. Accordingly, and having regard to the provisions of section 160(1) of the Act, a certificate will issue to the applicant affiliated bargaining agent on its own behalf and on behalf of all other affiliated bargaining agents of the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario (the designated employee bargaining agency) in respect of all electricians and electricians' apprentices in the employ of B & B Electric Co. Division of Electrobauer Systems Limited and/or Electrobauer Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.

65. Further, and also pursuant to section 160(1) of the Act, a certificate will issue to the applicant trade union in respect of all electricians and electricians' apprentices in the employ of B & B Electric Co. Division of Electrobauer Systems Limited and/or Electrobauer Limited in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.

66. The Registrar will destroy the ballots cast in the representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a fully particularized statement requesting that the ballots not be destroyed, and which the Board considers sets out good reasons not to destroy the ballots, is received by the Board from one of the parties before the expiration of that 30-day period.

67. The responding employer is directed to post copies of this decision immediately, adjacent to the "Notice to Employees of Application and of Vote" posted previously, and if this does not already include them, at its job sites as well. These copies must remain posted for a period of 30 days.

2209-96-R Tim Wilson, Applicant v. Retail Wholesale Canada Canadian Service Sector, Division of the United Steelworkers of America, Local 1000, Responding Party v. **The Brick Warehouse Corporation**, Intervener

Representation Vote - Termination - Count disclosing 13 ballots in favour of union, 13 ballots against it, and a single segregated ballot - Board determining that segregated ballot cast by eligible voter - Employee who cast segregated ballot advising Board that she was prepared to have ballot counted - Board not counting ballot, but directing the taking of another representation vote

BEFORE: *Ken Petryshen*, Vice-Chair.

APPEARANCES: *Robert B. Reid* and *Tim Wilson* for the applicant; *Heather Alden*, *Paul Kessig* and *Bill Gibson* for the responding party; *E. L. Stringer* and *R. G. Richter* for the intervenor.

DECISION OF THE BOARD; December 17, 1996

1. This is an application under section 63 of the *Labour Relations Act, 1995* in which the applicant seeks a declaration that the responding party no longer represents the employees in the bargaining unit for which it is the bargaining agent.

2. Pursuant to a direction from the Board, a representation vote was conducted on November 8, 1996. The count disclosed that 13 ballots were marked in favour of the responding party and 13 ballots were marked against it. In addition, there were two segregated ballots. A hearing was held on December 10 and 11, 1996, for purposes of determining whether Ms. Morrow and Ms. Cardosa were entitled to vote. During the course of the hearing, the responding party conceded that Ms. Cardosa was not entitled to vote. Since the Board determined that Ms. Morrow was entitled to cast a ballot, the parties were confronted with a tie vote and a single segregated ballot.

3. Counsel for the applicant advised the Board that Ms. Morrow was prepared to have her ballot counted. This was confirmed by Ms. Morrow in her evidence. The applicant and the intervenor took the position that in these circumstances the Board should count Ms. Morrow's ballot rather than direct the taking of another representation vote. The responding party urged the Board to follow what it described as the Board's usual practice and to order the taking of another representation vote.

4. After considering the representations of the parties on this issue, the Board has determined that the appropriate course to follow in these circumstances is to direct the taking of another representation vote.

5. The bargaining unit description is as follow:

all employees of The Brick Warehouse Corporation, in the City of St. Catharines, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period.

6. The Board directs that a representation vote be taken of the employees of The Brick Warehouse Corporation employed in the bargaining unit described in paragraph 5 above. All of those employed in that bargaining unit of October 29, 1996, the application filing date, will be eligible to vote.

7. The vote will be held on Friday, December 20, 1996. Other vote arrangements will be as determined by the Registrar and set out in the attached Notice of Vote and of Hearing.

8. Voters will be asked to indicate whether or not they wish to be represented by the responding party in their employment relations with The Brick Warehouse Corporation.
 9. The employer is directed to post copies of this decision and of the "Notice of Vote and of Hearing". These copies must remain posted for 30 days.
 10. The matter is referred to the Registrar.
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3061-93-R; 3235-93-R; 3413-93-R; 3458-93-R; 3683-93-R; 3806-93-R; 1795-94-R; 3111-93-R; 3412-93-R; 3467-93-R; 2236-94-R; 3182-94-R International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, Applicant v. **Cineplex Odeon Corporation**, Responding Party; International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Applicant v. **Cineplex Odeon Corporation c.o.b. Scarborough Town Centre Cinemas**, Responding Party; International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Applicant v. **Famous Players Inc.**, Responding Party

Certification - Membership Evidence - Reconsideration - Board applying decision in Famous Players case and allowing employers' reconsideration request respecting seven certification decisions issued prior to October 4, 1995 on ground that membership evidence filed by the union was defective - Board revoking certificates - Board finding membership evidence filed in two other certification applications satisfactory and dismissing reconsideration request with respect to those applications

BEFORE: *K. G. O'Neil*, Vice-Chair, and Board Members *W. H. Wightman* and *P. V. Grasso*.

APPEARANCES: *Bernard Fishbein* and *Larry Miller* for the applicant; *David N. Corbett*, *Brian D. Wylynko*, *A. Jane Milburn* and *Irwin C. Cohen* for **Cineplex Odeon Corporation**; *Harry Freedman* and *Doug Smith* for **Famous Players Inc.**

DECISION OF VICE-CHAIR K. G. O'NEIL AND BOARD MEMBER W. H. WIGHTMAN;
November 29, 1996

1. This is a request for reconsideration of the Board's decisions in the twelve certification files noted above. The employers ask that the Board revoke the certificates granted due to a defect in the membership evidence of which they were not aware until March, 1995 when they came into possession of a blank form of membership evidence. It is common ground that Bill 40 still applies to these applications as they were all filed before October 4, 1995.
2. The union takes the position that the request for reconsideration should not even be considered, and in the alternative, if it is to be considered, it should be dismissed on the merits. The union says that there is nothing raised in this application that could not have been raised earlier, and that it is now too late to complain about the form of the membership evidence filed.
3. The decisions under review include nine Cineplex Odeon and four Famous Players theatre locations in which the Board certified "front of house staff". The decisions are dated January 17, 1994 through November 2, 1994. In a majority of the cases involved, the parties agreed on all the items in

dispute and the hearing was waived. Bargaining unit issues were involved in two, which necessitated a hearing.

4. At one Famous Players location, the Uptown, there was a representation vote in which a majority of voters indicated they wished to be represented by the union. Both employer counsel assert that what flows from the absence of any membership evidence is a nullity, and thus the vote does not distinguish that particular file.

5. Subsequent to the certification decisions, notice to bargain was given in all of the files and bargaining has subsequently taken place.

6. Combination applications were granted for the Cineplex files at [1995] OLRB Rep. July 954. First contract arbitration was initiated, but had not come to hearing as of the date of hearing in this matter. There are no collective agreements in any of the Cineplex files.

7. In the Famous Players files, a combination application was granted at [1994] OLRB Rep. Nov. 1527. A collective agreement has been entered into, but it contains a clause that if the Board revokes the certificates the relevant locations will be deleted from the recognition clause. There are other certificates which are not subject to the reconsideration applications which would remain subject to the collective agreement negotiated.

8. In a 1995 application by the same union for certification at Famous Players locations in Hamilton, Ottawa and Thunder Bay, the employer successfully challenged the efficacy of cards giving authorization to bargain as membership evidence under Bill 40. The Board's decision, [1995] OLRB Rep. April 397 (MacDowell panel), which we will refer to as the 1995 *Famous Players'* decision canvassed the history of the definition of membership in the Act, and its place in Bill 40. The Board concluded that it was necessary to have evidence of membership or an application for membership to support an application for certification. Given the structure and history of the Act, it found that documents indicating a desire to be represented, or authorization to bargain, were not sufficient. The cards considered in that case are in the same form as the cards filed in a majority of the files before us, a sample of which is attached as Appendix A. The two other forms of card filed will be considered separately below, as they raise different issues.

9. Both the employers ask us to adopt the reasoning in the 1995 *Famous Players'* decision. It is said that the union must show that decision to have been wrong to avoid revocation of the certificate. They argue that they had no opportunity to raise the issue before, and that the matter should be considered afresh, for that reason, as well as because it is a question of the integrity of the Board. This, it is said, flows from the fact that the Board is the custodian of the confidential membership evidence, pursuant to section 113(1) of the Act, and it was up to the Board to disclose any potential defect in the membership evidence.

10. By contrast, the union argues that the employers could have raised the matter on the initial applications, that there was nothing preventing them from asking for a copy of a blank card, which would have raised no issue of confidentiality. See, *R.J. Ralph Automotive*, [1995] OLRB Rep. June 851. The union urges us to consider this in the same manner as any issue that might have been raised at a hearing but was not. The finality of the Board's decisions, it is argued, demand that a party not be able to reopen matters indefinitely as they think of further and better arguments than the ones presented originally. The union argues that both parties have relied on the Board's decisions for a considerable period of time, having had extensive dealings with each other since, and should not have to abandon the relationships flowing from the certificates. If the Board were to reopen the matter, counsel argues we are not bound by the 1995 decision as these matters were not before that panel.

11. The principles underlying each position are important ones, and they are in direct competition in this matter. Each counsel referred us to authorities to suggest how the Board should resolve the competing principles.

12. As to the general principles applicable on applications for reconsideration, there was little dispute. They are distilled in the following two quotations. First from *Canadian Union of General Employees*, [1975] OLRB Rep. April 320:

11. Generally, the Board will not reconsider a decision unless a party proposes to adduce new evidence which could not previously have been obtained by reasonable diligence and the new evidence is such that, if adduced, it would be practically conclusive or a party wishes to make representations or objections not already considered by the Board that he had no opportunity to raise previously. (*International Nickel Co. of Canada Ltd.* [1963] OLRB Rep. 234, 64 CLLC ¶15,493 (Ont. H.C.); *Detroit River Construction Case* (1962) CLLC ¶16,260). Both legs of this principle depend upon the applicant having been diligent and therefore having had no opportunity to draw the Board's attention to the objection of its concern. The applicant in the case at hand and his lawyer were not diligent in that they were given notice of the hearing date in the matter by the Board. Accordingly they would not appear to come with the ambit of the principle.

Secondly, from *John Entwistle Construction Limited*, [1979] OLRB Rep. Nov. 1096 after quoting a portion of the above passage from *Canadian Union of General Employees*:

• • •

These are general standards which the Board has developed as guidelines and which are useful not just to guide the Board in making its decisions, but also to allow parties who may be affected by the Board's decisions some degree of certainty of what to expect from the Board. While it is important for the purpose of certainty that these standards generally be adhered to, it is equally important that they not be followed inflexibly. Although neither of the two conditions precedent stated in the *Canadian Union of General Employees* case, *supra*, are satisfied here, the request does raise significant and important issues of Board policy and for this reason the Board will review its decision to determine if it should vary or revoke the decision.

See also *K-Mart Canada Limited (Peterborough)*, [1981] OLRB Rep. Feb. 185, which mentions the motives for the request and any resulting prejudice as factors to be considered.

13. It is the application of these principles to the unique circumstances before us which engenders the controversy before us. Focusing first on the concept of due diligence, the parties take opposite positions. Union counsel says that the conduct of the employers in this case does not meet the due diligence standard set out in the jurisprudence. Noting that all it took was a letter from employer counsel to obtain the blank sample membership evidence in the file which lead to the 1995 *Famous Players*' decision noted above, counsel asserts that there was no reason that the employers could not have done that in the earlier files. Referring to *Georgian Industries Inc.*, [1992] OLRB Rep. April 459, counsel says that where the evidence was available for the asking by the employer, the files should not now be reopened.

14. It is the position of the employers that they acted with due diligence in that they raised the issue as soon as they learned of the form of the membership card, which was in March, 1995. They argue that due diligence does not require that they question the Board's processes, or assume there is an issue about the form of the membership evidence when none was raised by the Board's officers during the waiver process or by the panel in any hearing. The practice and culture of the Board is cited as making it quite unacceptable for the employer to ask to see a card. Counsel maintains that the Board would not have disclosed the card without a basis for his asking for it. The employer urges us to find that due diligence should be measured from the point at which the responding parties knew there might be a problem.

15. In *Georgian Industries Inc.*, cited above, the Board had before it an application for certification and allegations of unfair labour practices. The Board heard issues relating to challenges to the persons on the list of employees first, which consumed nine days of hearing. Having rendered its decision on that issue, the Board turned to the unfair labour practice allegations. Evidence called during that portion of the hearing lead the union to ask the Board to reconsider its decision on the list issue. Finding that the evidence on which they sought to rely had been readily available during the first portion of the hearing, the Board found that the union had not met the due diligence test, and therefore the decision would not be reconsidered.

16. In *Georgian Industries Inc.*, the Board considered and distinguished *Coons Heating & Sheet Metal Limited*, [1978] OLRB Rep. June 525, where the Board reconsidered its earlier certification decision, where evidence came to light of employer support of the union that had been certified. In *Coons Heating & Sheet Metal Limited*, the Board said that in light of the strict prohibition in the Act against certifying in cases of employer support, it was appropriate to reconsider.

17. Union counsel also referred us to *Monte Carlo Carpentry*, [1982] OLRB Rep. June 914. In that case, through administrative error, the Board did not process a second application for certification by the Carpenters union, which had been filed before the terminal date in the first one, where the Labourers' union was the applicant. The Board certified in the first application. Eight months later, the carpenters filed for reconsideration. Despite knowing of the Board's usual time frames for giving notice, no follow-up had been done on their application, allowing the Board's error to go undetected.

18. The Board found it appropriate to balance the interests of the three parties involved. The employer alleged no prejudice. Because the Carpenters did not act in a timely fashion to protect the rights they were seeking, while the Labourers had actively pursued their rights, it was held that the decision would not be reconsidered. The Board also noted that the labourers were at a strike stage in their bargaining, and any representation vote would be skewed by that.

19. The union invites the Board to engage in a similar balancing of the interests involved. Here there have been certificates issued and relied on by the Board and the parties for many months. A series of litigation and bargaining ensued, well beyond what happened in *Monte Carlo Carpentry* cited above. Union counsel says that fundamental to this case is the fact that whether or not the cards are technically deficient, they are unambiguous about what the employees want. Further, with one exception, in the Kanata Cineplex location, there have been no displacement or termination applications pertaining to the bargaining rights obtained in the disputed files. Counsel queries why the employer should be challenging the certificates when the employees are not.

20. Moreover, observes union counsel, from a jurisprudential point of view the case is an anomaly, because the legal arguments are about provisions of the Act which are no longer in place. There is no jurisprudential value in reopening the matter. Counsel argues that the only real effect will be to take away bargaining rights from employees who on every test imaginable have indicated they want the union to bargain for them and represent them. The Board is urged to conclude that this case does not "pass the *Monte Carlo Carpentry* test." Counsel for Famous Players distinguishes *Monte Carlo Carpentry* on the basis that what was involved there was an administrative error, rather than a fundamental adjudicative issue, as here, which goes to the Board's jurisdiction to grant a certificate and that *Georgian Industries Inc.* is distinguishable because there the problem was that a party did not call a witness on an issue in dispute. Here no issue had been raised.

21. Counsel for Cineplex argues that this is analogous to fraud, which has no time limit, and where certificates are revoked even where there is subsequent reliance. Counsel was not suggesting that there was any improper conduct, but that the importance of membership evidence has always meant that the Board does not get into a balancing of interests. It is a jurisdictional issue; the Board did

not have jurisdiction to issue the certification. As with fraud, counsel suggests the Board must determine whether it is actually evidence of membership. Counsel argues that the employer has every right to see that the appropriate procedures were followed.

22. Counsel for Cineplex refers to *Richard D. Steele Construction (1979) Ltd.*, [1987] OLRB Rep. August 1110 in which a union was certified on the assumption that it was not an affiliated bargaining agent. In a subsequent case the issue was fully litigated, and it was determined that the applicant was an affiliated bargaining agent, and therefore the union could not be certified for bargaining units which included employees other than those of the carpenters and millwright trades in the ICI (industrial, commercial and institutional) sector. In the earlier case, the union had been certified for just such a unit. Despite the fact that a collective agreement had been entered into, the Board on its own initiative called for submissions on the problem raised by the juxtaposition of the two decisions. The Board determined it was unlawful to certify for this group, and revoked the certificates. The Board distinguished *Monte Carlo Carpentry*, cited above, on the basis that the result of the decision the Board was being asked to review involved no illegality. Counsel argues that this is similar to the case here. The Board certified on the mistaken assumption that the membership evidence was in a proper form.

23. Union counsel distinguishes *Richard D. Steele Construction (1979) Ltd.*, cited above, on the basis that the statute prohibits the certification of a union in the circumstances which were before the Board. That is not the case here, where there is no statutory prohibition against certifying on the evidence that was before the Board. Moreover, he argues that his argument as to the meaning of the statutory provision in section 8(4)(1) was, and remains, a viable interpretation of the statutory language.

24. Moreover union counsel argues that in *General Printers Limited*, [1963] OLRB Rep. Sept. 339 there is precedent for consideration of the reliance interest in a situation similar to this one. In that case, the union filed working cards, authorization cards and accompanying receipts as the membership evidence. Since the applicant had relied on the fact that identical membership evidence had been accepted in another application by a sister local, the Board accepted them, but advised that it might have to reconsider their acceptability in the future. A further decision on an application for reconsideration in the same matter, reported at [1963] OLRB Rep. December 510, makes it clear that the Board was able to make a positive finding that the combination of the various documents filed constituted applications for membership. Thus, although the situation was not crystal clear, the Board was not in a position where it had no document that it could find to be an application for membership, as the respondents argue is the case here. Finding itself satisfied with the evidence of membership filed, the Board found no reason to revoke the earlier decision.

25. One of the main questions to be answered in this case is whether the Board should treat this matter as any other issue which a party could have raised, and did not. If so, there is ample authority for the proposition that the application for reconsideration should be dismissed. But if the matter is characterized as an issue the responding parties had no opportunity to raise before, that proposition is in doubt.

26. It cannot be said that the responding parties had *no* opportunity to raise the matter before now. They could have done what counsel for Famous Players did in 1995: request a blank sample of the membership evidence. Thus, the question of opportunity to raise the matter is linked with the concept of due diligence, as it is clear that had the employers asked for a blank card, there would have been an opportunity to argue this issue on the initial application. And in recent years it has not been a rare occurrence that a party asks for a sample of blank membership evidence, particularly when issues arise such as those in *R. J. Ralph Automotive*, cited above or, *Roy Ayranto Sales*, [1994] OLRB Rep. March 285, where objecting employees raised allegations about the collection of and effect of membership evidence. But the Board's experience is that some unions resist such production. And, each of the

counsel for the responding parties is correct that it has not been usual for employers in a routine certification application to inquire as to the form of the membership evidence where no issue is raised by the Board or its officers. In general practice, the shroud of confidentiality created by section 113 has been considered by many parties to extend to all potential issues surrounding membership evidence with the exception perhaps of fraud. This is not technically the case, of course, as the confidentiality provisions are only directed to the identity of the employees who have expressed their desire to be represented or not.

27. The balanced characterization of the situation pertaining at the time of these applications, in our view, is that questions about the form of the membership evidence were considered primarily in the Board's domain to raise, although there were instances where parties raised them themselves. And there was no legal obstacle to their doing so. However, the waiver process, which was involved initially in all the files before us, (and successful in avoiding the expense of a hearing in most of them) is not one which is conducive to parties' raising issues without a basis for them. It is a mediated process, in which settlement, or narrowing of the issues in dispute, is the goal. An employer "just checking" on the membership evidence, without some prior information which caused concern, might well have been considered overly litigious. It is a reality of labour relations in this province that many of the counsel involved have a long-standing relationship with the Board, its personnel and its particular culture which would affect what issues they felt it appropriate to raise. Although this reality cannot be determinative of legal rights, it is our view that it is appropriate to take it into account in exercising our discretion in deciding whether or not to reopen this matter.

28. Having taken that factor into account, it is our view that to articulate a standard of due diligence which would have required employer counsel, without any prior foundation for any concern, to have queried the membership evidence in this case, is not conducive to the overall effective functioning of the Board. It is important for all parties that, where possible, issues are settled, and that unnecessary ones are not raised and litigated. Harmonious labour relations are not served by encouraging the search for issues to raise. The long term interest of the institution and the parties who appear before the Board is best served if due diligence is seen in a manner that does not require the raising of issues where no cause for concern is reasonably apparent. In saying this, we are influenced by the nature of the issue in dispute, which is at the foundation of the most basic process in the Act, the determination of membership support in an application for certification, framed as it is by the requirement for confidentiality set out in section 113. It is this that sets this apart from the more usual kind of issue where the failure to raise it initially will be fatal on an application for reconsideration. Here, it would have been reasonable for the parties to expect that the Board would have called for argument on the potential defect because there was no reference to membership in the document. Thus, we are of the view that this matter should be viewed as one in which the employers had no meaningful opportunity to raise the matter, although we have noted that technically it could have been raised.

29. It is fair to underline at the same time that we do not accept that the concept of due diligence can in general be said to run from when a party becomes aware of an issue. Except in very specific cases such as fraud, where it has been said that there is no time limit, or where there has been some unusual combination of circumstances such as here, issues must be raised in a timely manner - timely not just in reference to when the party became aware of the issue, but also in reference to the hearing and determination of the matter. Reconsideration is not available for the reargument of cases or more creative theories thought of later, in light of new information or jurisprudence; this has been affirmed repeatedly in the Board's jurisprudence. See for instance, *Silverwood Dairies*, [1977] OLRB Rep. June 392.

30. Having concluded that the application for reconsideration should not be dismissed on the grounds of lack of due diligence on the employers' parts, we are nonetheless faced with the question as

to what weight, if any, should be given to the passage of time, and the reliance the parties put in the Board's decision in shaping their dealings with each other. The employers say they should be in the same position as if they had argued the issue in the first place; the union says a weighing of the interests at play should be done, as it was in *Monte Carlo Carpentry*, cited above, and the Board should conclude that the matter should not be reopened, particularly since the employees have clearly communicated that they wish to be represented by the union, which is what the membership evidence is a proxy for in the first place. See the discussion in *Knob Hill Farms*, [1995] OLRB Rep. March 303.

31. If one were to engage in such a balancing of interests, the mix would be quite different than that in *Monte Carlo Carpentry*, as one of the parties there had sat on its rights while in possession of information which should have caused it to act differently. Here, we have a much more even mix of interests. In not questioning the membership evidence, the employers acted in a manner which we do not find, as discussed above, should be characterized as lack of due diligence. The union, similarly, was not on notice that there was any problem with its filings, and therefore did nothing at the time to remedy any potential deficiency. All parties have relied on the certificates to bargain and deal with each other in the interim, albeit on a without prejudice basis since the issue was raised in 1995. As of the date of hearing the employees had evidenced no dissatisfaction or attempt to terminate the bargaining rights, with the exception of the Kanata Cineplex location. And the wording of the cards submitted by the union does indicate a desire to be represented in collective bargaining. There is no basis in our view, to tip the balance against the interest of any of these parties because of their conduct, as was the case in *Monte Carlo Carpentry*. The fact is, there is no "fault" to be attributed to the parties here.

32. The ideal would be if the parties could be put back in the position they were in when the matters were first dealt with. But that is not possible. There is no middle ground here either, so that the results of the error would somehow be shared equitably between the parties. A Board decision to revoke the certificates, on the basis that they never would have been issued if the question had been raised by the Board, which is what is sought by the employers here, would have the effect of removing the bargaining rights of the union, which were obtained through a process which, at the time, gave it no reason to think was problematic. It would then have the option to reapply for certification, but with the attendant cost and uncertainty of doing so. To take the other course, and dismiss the applications for reconsideration because of the interest in finality and the reliance the parties have put on the decision in the interim, would mean that an opportunity to raise the issue which ought to have been afforded them would not be available to them. The employees would remain able to bring applications for termination or displacement applications for certification at the appropriate times if there were appetite to do so.

33. This case is not as clear as *Richard D. Steele Construction (1979) Ltd.*, or *Coons Heating & Sheet Metal Limited*, cited above, because there is arguably no prohibition against certifying the union in the circumstances in which the Board did. And as we have said, there is not the equitable consideration of conduct to rely on to prefer one interest over another as there was in *Monte Carlo Carpentry*. We have considered that the status of authorizations to bargain under Bill 40 had never been put to the test until well after the decisions in question were made. The question is whether the Board should exercise its discretion to reconsider where there had been no case deciding that such cards did not meet the requirements of Bill 40, the law was arguably uncertain and the party filing them has a coherent position which could have lead to the conclusion that they did. Although that position was not accepted in the 1995 decision, it is a carefully reasoned one, which attracted the Board's detailed attention in that decision. In any event, the 1995 decision cannot be the reason one would reconsider, because it was a later event. Rather it is the idea that a mistake was made when the matter was not raised by the Board at the time of certification and the desire to remedy that which is the main reason one would reconsider.

34. There is a finding in each of the decisions in issue here to the effect that the employees had applied for membership, which is on its face a finding that the cards met the Act's requirements. But, on the reasoning urged by the respondents, and accepted in the 1995 *Famous Players'* decision, this is not the case. And there is no evidence that the Board's attention had been specifically drawn to the form of the membership evidence, (as opposed to its quantity and timeliness, which is not disputed) as there are no reasons highlighting this aspect in the decisions in issue. There is no suggestion from any party that the issue was raised at all by anyone. The result would be very straightforward if it had been raised in some fashion; reconsideration would be unavailable.

35. The fact that there is a finding on the issue, and that there is a reasoned argument in favour of the union's position rather than a certification clearly prohibited by the Act, such as in *Richard D. Steele Construction (1979) Ltd.*, makes this a very close case. We have weighed all the above factors, and have decided that the importance of the parties' reliance on the Board to scrutinize the membership evidence which is unavailable to the employers under section 113 is such that we should favour the reopening of the decision in the unusual circumstances of this case. Once reopened, there being no viable mid-ground to deal with the evenly divided equities, we think the matter is to be considered as if the parties had argued it on the original applications. Accordingly, the majority is of the view we should consider the arguments on their merits.

36. Turning then to the merits of the matter. The arguments of the parties on whether authorizations to bargain should be accepted as membership evidence under the provisions of section 8(4)(1) of the former Bill 40 are briefly set out below. They are essentially the same as those considered in the 1995 *Famous Players'* decision.

37. The salient statutory provisions are as follows, from Bill 40:

8.- (1) Upon an application for certification, the Board shall ascertain,

- (a) the number of employees in the bargaining unit on the certification application date; and
- (b) the number of those employees who are members of the trade union on that date or who have applied to become members on or before that date.

(2) The Board shall direct that a representation vote be taken if it is satisfied that at least 40 per cent and not more than 55 per cent of the employees in the bargaining unit are members of the trade union on the certification application date or have applied to become members on or before that date.

(3) The Board may direct that a representation vote be taken if it is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade union on the certification application date or have applied to become members on or before that date.

(4) The Board shall not consider the following evidence if it is filed or presented after the certification application date:

- 1. Evidence that an employee is a member of a trade union, has applied to become a member or has otherwise expressed a desire to be represented by a trade union.
- 2. Evidence that an employee who had become or had applied to become a member of a trade union has cancelled, revoked or resigned his or her membership or application for membership or has otherwise expressed a desire not to be represented by a trade union.
- 3. Evidence that an employee who had become or had applied to become a member of a trade union has done anything described in paragraph 2 but has

subsequently changed his or her mind by becoming a member again, by reapplying for membership or by otherwise expressing a desire to be represented by a trade union.

(5) The Board shall not consider evidence of a matter described in paragraph 1, 2 or 3 of subsection (4) that is filed on or before the certification application date unless it is in writing and signed by each employee concerned.

(6) The Board may consider evidence of a matter described in paragraph 2 or 3 of subsection (4) but only for the purpose of deciding whether to make a direction under subsection (3) and only if the evidence is filed or presented on or before the certification application date and is in writing and signed by each employee concerned.

(7) Subsections (4) and (5) do not prevent the Board from,

- (a) considering whether, on or before the certification application date, section 65, 67 or 71 has been contravened or there has been fraud or misrepresentation;
- (b) requiring that evidence of a matter described in paragraph 2 or 3 of subsection (4) that is filed or presented on or before the certification application date and is in writing and signed by each employee concerned be proven to be a voluntary expression of the wishes of the employee; or
- (c) considering, in relation to evidence of a matter described in paragraph 1, 2 or 3 of subsection (4) that is filed or presented on or before the certification application date and is in writing and signed by each employee concerned, further evidence identifying or substantiating that evidence.

* * *

9.1- (1) If a representation vote is taken, the Board shall certify the trade union as the bargaining agent of the employees in the bargaining unit if more than 50 per cent of the ballots cast were cast in favour of the trade union.

* * *

105.- (2) Without limiting the generality of subsection (1), the Board has power,

• • •

(j) to determine the form in which evidence of membership or application for membership or of objection to certification of a trade union shall be filed or presented on an application for certification and to refuse to accept any evidence not filed or presented in that form;

* * *

108.-(1) The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the Board thereon is final and conclusive for all purposes, but nevertheless the Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

• • •

113.-(1) The records of a trade union relating to membership or any records that may disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union produced in a proceeding before the Board is for the exclusive use of the Board and its officers and shall not, except with the consent of the Board, be disclosed, and no person shall, except with the consent of the Board, be compelled to disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union.

• • •

And from the Board's Rules of Procedure under Bill 40:

1. j) "membership evidence" includes written and signed evidence that an employee is a member of a trade union, has applied to become a member or has otherwise expressed a desire to be represented by a trade union.

38. The union argued that the authorizations to bargain fit within the definition of membership evidence in section 1(j) of the Board's Rules of Procedure under Bill 40 (set out above), which includes documents in which employees have "otherwise expressed a desire to be represented by a trade union". The union's argument is that the documents submitted are in that category, not that they constitute applications for membership. The Rules of Procedure are obviously derived from the wording of section 8(4), in the union's submission. Union counsel argues that section 8(4) makes it clear that this is evidence you *do* consider if it is filed before the application date. The marginal note in the Office Consolidation of Bill 40 says "Evidence" (not timing) which should assist the Board in finding that this was appropriate evidence on a certification application. The union does not argue that expressions of desire to be represented constitute membership evidence for the whole Act, but that they do for subsection 8(4). Bill 40 provided a code of evidence in section 8(4) to be used when applying subsections 8(1), (2) and (3), argues counsel, disagreeing with the MacDowell decision's conclusion that subsection 8(4) is just a timing provision. He asserts that if it is, subsection 8 (5) is too. In the union's view, to find otherwise is to wrongly read out of the statute the third component of subsections 8(4) 1, 2 and 3 which refers to other expressions of desire. Counsel argues that section 8(4) regulates what can be filed, not just when. Union counsel does not quarrel with the history of the concept of membership set out in the MacDowell decision or the idea that the Legislature did not jettison the concept of membership after the decision in *Metropolitan Life Insurance Company v. International Union of Operating Engineers, Local 796 et al* (1970) 70 CLLC para. 14,008. The more pertinent question in counsel's view is what happened after Bill 40.

39. In union counsel's view it is important to remember that the card is cleaner, more explicit than a regular card about the purposes to which it will be put. As *Knob Hill Farms*, cited above, put it, all membership evidence is a proxy, imperfect at best, for wanting to be represented, and this is direct evidence that the employees want to be represented. This has the symmetry and simplicity which the Board acknowledges at paragraphs 53 and 54 of the 1995 *Famous Players'* decision.

40. Moreover counsel argues that no one can dispute that this form complied with the Board's rules, which mirror section 8(4)1, not accidentally but because that is what the statute says. And it is consistent with the power of the Board to dictate the form of the membership evidence.

41. As to the vote at the Uptown location union counsel argues that there the employees have said twice, with cards and a vote, that they want the union. It is argued that section 9.1 gives the unqualified right to be certified after more than 50% vote for the union.

42. Counsel also asked in the alternative that he be allowed to call *viva voce* evidence that the employees who signed the authorization cards were becoming or have become members. He submitted that this issue should be seen in a different light than that expressed in *P.R.C. Chemical Corporation of Canada Ltd.*, [1980] OLRB Rep. May 749, referred to in the 1995 *Famous Players'* decision, because Bill 40 was a completely different statutory framework which did not have a statutory definition. We do not propose to adopt that route because the Bill 40 system was a document based system. *Viva voce* evidence of the type proposed is inconsistent with a document based system as well as with the confidentiality provisions of section 113.

43. By contrast, counsel for Famous Players argues that section 8(1) is a charging section. Its two components, (a) and (b) do not add the third point of subsection 8(4), and the Board should find it significant that the jurisdiction to move forward, in subsection 8(1), uses words different from subsection 8(4). As well, subsections 8(2) and (3) which dictate the consequences of the section 8(1) calculation does not contain the “otherwise expressed a desire ...” language.

44. In employer counsel’s submission, section 8(4)1 is dealing with evidence which may be relevant under section 8(3) because the words are different than that of sections 8(1),(2),or (3). Without the provisions of section 8(4)(1) there would be no basis to receive evidence relevant to the discretion, argues counsel and subsection 8(4) indicates *when* it has to be filed. The marginal note “Evidence” should not be used to change the terms of the statute.

45. Further counsel for Famous Players argues that section 9.1(2) of Bill 40 feeds back to 8(1)(2)(3). They are all based on applications for membership or membership, not documents indicating a desire to be represented. As to the Uptown vote, counsel argues that section 9.1(1) is only applicable after the assessment in section 8(2) and (3) has been made. That is the jurisdictional basis, which need not be repeated in section 9.1. Where a vote should never have been ordered, it cannot end the matter. There was no jurisdiction to do so and the application should have been dismissed in counsel’s submission.

46. We are of the view that the preferable reading of the Act is that the cards are not evidence of membership or applications for membership, for the reasons set out in the 1995 *Famous Players* decision. Briefly put, Bill 40 required membership or applications for membership to support an application for certification. And attractive as the union’s arguments are, they do not square well with the continued presence of membership, rather than authorization to bargain, as the primary basis on which the support for certification is measured under Bill 40. We thus find that the evidence filed in the form of authorization to bargain is not evidence of membership or applications for membership. Accordingly, the applications ought to have been dismissed and likely would have been if the opportunity to argue the matter had been afforded. In the circumstances, the certificates should now be revoked. As to the the Uptown location, we are of the view that the preferable interpretation is that if the vote should not have been ordered, its results should not be given effect, and therefore it should not be an exception.

* * *

Other forms of membership evidence - Files 3061-93-R and 3413-93-R

47. There are two files in which the form of membership evidence was different than the authorization cards considered above. They do not raise the same questions of the integrity of the Board or provide the same basis for reconsideration as they do mention membership. Counsel for Cineplex argues that these cards are also bad, not because they are not membership evidence, but because it is not apparent what they are applications for memberships in. In any event, it is argued that they should not be considered applications for membership in the international, which is the applicant in this matter, as they are “local” cards left blank.

48. Having considered the parties’ arguments, we are satisfied that the membership evidence is acceptable as membership in the international, and that there is no basis on which to reconsider the certificates based on the cards which refer to the local union. Our reasons follow.

49. There are two forms, the first of which we will refer to as the short form, which is appended to this decision as Appendix “B”. Counsel for Cineplex argues that this form is ambiguous. It does not make it at all clear what they are applying for membership in: a local, a department or the international.

50. The other form, which will be referred to as the long form, is appended to this decision as Appendix "C". Counsel for Cineplex argues that although this is somewhat clearer, it has the same problem. There is no indication of a number for the local. Counsel says that the issue is: Is this evidence of membership in the international? He argues that when looking at issues involving membership in a local as opposed to an international union in the past, the Board has held that evidence of membership in the local does not constitute evidence of membership in the international.

51. Counsel refers to *Metropolitan Life Insurance Company*, (1967), 67 CLLC para. 16,026 (OLRB). In that case there was a space provided for insertion of the number of the local, but none had been filled in. The local was the applicant, and there were receipts indicating receipts for initiation fees in the local. The majority of the Board read them together and found them to be sufficient evidence that the employees had applied for membership in the applicant local union.

52. The case of *Bernardin of Canada Limited*, [1975] OLRB Rep. October 737 was also a case where the space for indication of the local was left blank. The Board found that it was not clear whether the employees signing had signed for the international union or the local. Since application in an international union has not been accepted as evidence of membership in a local thereof and the applicant was the local, the Board found it was not satisfactory membership of evidence and dismissed the application.

53. Union counsel argues that a correct statement of the law is that membership in an international may not equal membership in the local, but that membership in a local of a parent international union will support the application of the international.

54. Union counsel argues that the cases cited by Cineplex relate only to the narrow point as to whether you can cure the omission of a local number with a reference to the local on the receipt. Counsel underlines that even where the Local number is filled in, it is perfectly legitimate evidence for the international. If it is filled in, there might be confusion, but here it is not filled in, and counsel argues there is no confusion. To this effect counsel cites *The Explorer Inns, Limited*, [1978] OLRB Rep. June 541 at para 8:

8. While membership in a local is deemed for the purposes of an application for certification to be membership in a parent international where the parent is the applicant, it is the well established practice of this Board that the signing of a membership application in an international union is not evidence of an employee's membership in a particular local of that international union (*Cochrane Dunlop Hardware Ltd.* 63 CLLC ¶16,268; *O.J. Gaffrey Ltd.*, [1965] OLRB Rep. Dec. 641; *The Journal Publishing Company of Ottawa*, [1974] OLRB Rep. July 449; *Bernardin of Canada Ltd.*, [1975] OLRB Rep. October 737; *Beatrice Foods (Ontario) Limited, Lakeview Dairy Division*, [1977] OLRB Rep. March 192.).

and *Canada Valve Limited*, [1980] OLRB Rep. December 1727 where the practice is set out in para. 2 of the dissent, as follows:

2. The present practice is to accept as evidence of union membership, application cards indicating membership in a local of the organization to which the local is affiliated, e.g., a national or international trade union, when the certification application to the Board is made in the name of the parent organization. Application cards made in the name of the parent organization only, *without* local identification are also acceptable when the application for certification is made in the name of the parent organization. However, when an application for certification is made in the name of a local, the application for membership cards must show the local identification corresponding to the name on the application for certification.

To the same effect see, *Le Droit Ltée.*, [1970] OLRB Rep. December 945.

55. Counsel for Cineplex replies that the union has not provided a case where the international was the applicant. Counsel asserts that if these were applications with a local number, that would be an application in the parent, but no local number is inserted here; it is more ambiguous because it is left blank. They ought to be considered failed applications for the Local, in counsel's view. They are applications for nothing.

56. It is our view that the applications are sufficient evidence of application for the International union who is the applicant in this case. With the Local number left blank, the entity specifically referred to is the International. Without a specific Local number, it would be difficult to argue that this was an application in a local in any event. Were a local union the applicant, the cards would cause difficulty. However, given that the applicant is the international we find them sufficiently clear to accept.

57. For the above-noted reasons, the applications for reconsideration in Files 3061-93-R and 3413-93-R are dismissed and granted in the remaining file numbers with the exception of Files 3467-93-R, 3182-94-R and 3412-93-R. These three files will be dealt with in a separate decision because of issues raised by the parties in regards to events subsequent to these applications.

DECISION OF BOARD MEMBER P. V. GRASSO; November 29, 1996

1. This case involves the issue of whether the Board should re-open a series of certification applications in which certificates were granted in 1994. Despite the significant amount of time that has elapsed since those decisions were issued and the subsequent issuance of notices to bargain, the granting of combination applications, the initiation of a first contract arbitration, and the entry into a collective agreement, the majority held that the files should be re-opened and that the certificates should be revoked. With respect, I disagree.

2. I do not believe that the facts in this case are as unique or unusual as the majority credits them. In essence, the employers thought of an argument that they did not think of during the earlier proceedings, and now, five to fourteen months after the cases were completed, they wish to have the Board consider it. This scenario is one that is played out in many of the dozens of reconsideration requests that the Board receives, and dismisses, every year.

3. With reasonable diligence, the employers could have obtained blank membership cards when these matters were being dealt with in 1994. All the employers had to do in these cases was ask to see them -- the fact that the employer in the 1995 cases asked for and obtained sample cards is proof of that. But they did not and they must live with the consequences. Reconsiderations are not available for the purpose of allowing counsel to correct any deficiencies in their earlier treatment of the cases.

4. The need for finality in Board decisions underlies the principles for the Board's approach to reconsideration requests. The parties in these cases have put considerable reliance on the 1994 certificates, and particularly in light of the fact that the employers' argument could reasonably have been made at the original proceedings, I would not re-open the case.

5. Furthermore, if the cases were to be re-opened, I would not revoke the certificates. As the majority noted, there is no legal barrier to the conclusion reached in these files in 1994 that the union should be certified. The Board's rule that defines membership evidence includes "written and signed evidence that an employee is a member of a trade union, has applied to become a member *or has otherwise expressed a desire to be represented by a trade union*". Together with the union's argument on how section 8(4)(1) should be read, there is clearly a viable legal basis for the Board's decision to certify in 1994. Although a later decision in a different case found otherwise, I think it is imperative to the Board's processes that reconsideration not be available on the basis that a later decision in a different case shows that an earlier matter could have been argued and decided differently. To rule otherwise

would be to open the door to overturning cases whenever there is an evolution in the Board's jurisprudence because of different arguments that are provided in similar cases.

6. The revocation of the certificates will frustrate what are clearly the employees' wishes to have the union in their workplace. The question of whether to grant a certificate is really a question about whether employees want the union to represent them in bargaining with their employer. Indeed, the Board's own ballots that are used in representation votes get to the heart of the matter by asking, "In your employment relations with your employer do you wish to be represented by the union?" The disputed cards unambiguously signify that the answer to the question the Board asks is "yes".

7. The effect of the majority's decision is to take away bargaining rights from employees who have clearly expressed a desire to have the union bargain for them and represent them. The revocation of the certificates in these circumstances signifies a triumph of form over substance.

8. Accordingly, I would not grant the requests for reconsideration.

AUTHORIZATION FOR REPRESENTATION

**INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYES AND MOVING
PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO-CLC**

I, _____
(print employee's name) (telephone)

of _____
(print street address, city, zip)

_____ (classification) _____ (beeper #, if any)

hereby authorize International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO-CLC to represent me for the

purpose of collective bargaining with my employer, _____
 and to negotiate and conclude all agreements respecting wages, hours, and other terms and conditions of employment. I understand that this card can be used by the Union to obtain recognition from my employer without an election.

Date: _____ SIN # _____
(month, day, year) (social insurance number of employee)

Signed: _____
(signature of employee)

Rec'd by: _____ **NOTE: READ BEFORE SIGNING**

APPENDIX "B"



**INTERNATIONAL ALLIANCE OF THEATRICAL STAGE
EMPLOYES AND MOVING PICTURE MACHINE
OPERATORS OF THE UNITED STATES AND CANADA**

LOCAL _____

**Designation of Collective Bargaining Representative
and Application for Membership**

I hereby designate and authorize the above-named Union to act for me as my collective bargaining agent in all matters pertaining to wages, hours, and other terms and conditions of employment; and I hereby also apply for membership in the above-named Union.

PRINT
NAME (in full) _____
(First) (Middle) (Last)

ADDRESS _____
(Number) (Street) (City)

_____ (State) (Zip) (Phone)

Employer _____ Position _____

DATED _____ SIGNATURE _____

APPENDIX " "

DUPLICATE (Both Original and Duplicate Must Be Forwarded to General Office)

PRINTED IN U.S.A.
115THIS APPLICATION MUST BE ACTED UPON
WITHIN SIX MONTHS OTHERWISE A NEW
APPLICATION MUST BE SUBMITTED.THIS APPLICATION MUST BE ACCOMPANIED
BY THE \$5.00 PROCESSING FEE.

Name of Applicant _____ Social Security No. _____

APPLICATION BLANK OF LOCAL UNION No. _____ SPECIAL DEPARTMENT
OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND
MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA

I have the honor to make application for membership in Local No. _____, Special Department of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, and upon admission to membership in Local No. _____ aforesaid, I shall abide by the Constitution, By-Laws, Special Laws, laws, decisions, rules, regulations and working conditions of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, of the Special Department of the said International Alliance and of Local No. _____ thereof.

I, _____, was born on _____ Day _____ Month _____ Year;
(Print or type Name)
now residing at _____ have
(Street) (City) (State)
been a resident of _____ for _____ years. I am by occu-
(City and State)
pation a _____ and have worked
at the following:

Theatres _____
Exchanges _____
Home Offices _____
Elsewhere in the theatrical, television or moving picture industries (specify) _____

Have you ever applied for membership in any Local of this Alliance? _____

Date of Previous Application, if any _____ Made to Local No. _____

Was Application rejected? _____

I, the undersigned, am now employed by _____
(Company or Owner)
as a _____ in the _____
(Name and Address of Employer)

I have authorized, designated and chosen the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada to negotiate, bargain collectively, present and discuss grievances with my employer, and to enter into a closed-shop contract with my employer, if legally permissible, or one requiring union membership as a condition of employment, as my representative and my sole and exclusive collective bargaining agency, and I do hereby confirm the same in all respects.

SIGNATURE OF APPLICANT _____

(Sign Here)

Dated _____ 19 _____

This application submitted by Local No. _____ (city) _____

(LOCAL SEAL HERE) Secretary _____

THIS APPLICATION MUST BE COMPLETED IN DUPLICATE WITH
SIGNATURE OF APPLICANT AND LOCAL SEAL ON BOTH COPIES

This is to certify that _____ has on this _____
day of _____, 19 _____, been admitted to membership in Local No. _____
having fully complied with the requirements as set forth in the By-Laws of said local organization and
of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of
the United States and Canada, governing Special Department local unions.

_____, President
_____, Secretary

(LOCAL SEAL HERE)

THIS STUB TO BE FILLED IN AND RETURNED
TO GENERAL OFFICE IMMEDIATELY FOLLOWING
APPLICANT'S ADMISSION TO MEMBERSHIP.

Member's Social Security Number _____

2021-96-U de Havilland Inc. and Bombardier Regional Aircraft Division, Applicants v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local Unions 673 and 112 and those persons named in Appendix “A”, Responding Parties

Remedies - Strike - Board finding that union supporting or encouraging illegal strike in relation to “Days of Protest” against provincial government - Board seeing no reason not to grant both declaratory and directory relief, particularly in view of union’s ongoing intention of interfering with production

BEFORE: *M. A. Nairn*, Vice-Chair, and Board Members *S. C. Laing* and *D. A. Patterson*.

APPEARANCES: *L. Bertuzzi* and *C. Robertson* for the applicants; *B. Chercover* for the responding parties.

DECISION OF THE BOARD; December 2, 1996

1. This was an application brought pursuant to section 100 of the *Labour Relations Act, 1995* (the “Act”) alleging that the responding trade union parties had “called or authorized or threatened to call or authorize an unlawful strike” (see section 81 of the Act) and that named officers, officials, or agents of the trade unions or persons had “counselled or procured or supported or encouraged... or threatened an unlawful strike” when they knew or ought to have known that, as a probable and reasonable consequence of their actions, others would engage in an unlawful strike (see sections 81 and 83 of the Act).

2. After a short hearing and by decision dated October 17, 1996 the Board issued certain declarations and directions without providing reasons. Both parties have since requested written reasons and we provide them here.

3. Paragraph 2 of the October 17, 1996 decision notes as follows:

This application arises in connection with plans for the holding of Metropolitan Toronto “Days of Protest” on October 25 and 26, 1996. The facts giving rise to the application were not seriously in dispute and the matter proceeded on the basis of particulars pleaded with certain explanations and caveats provided by counsel. There was no dispute that a collective agreement is in place in respect of each bargaining unit affected, which agreements, consistent with the terms of the Act, prohibit strikes during the term of that agreement. The particulars also disclose that the responding trade union parties and officials or officers or agents of the trade unions have, at the very least, threatened to call and have counselled and supported and encouraged the holding of an illegal strike against de Havilland on October 25, 1996.

4. Paragraph 4 of that decision sets out the Board’s remedial determination as follows:

- (1) *declares* that the responding party trade unions have each called or authorized or threatened to call or authorize an unlawful strike contrary to section 81 of the Act;
- (2) *declares* that the individual responding parties have counselled or procured or supported or encouraged an unlawful strike or threatened an unlawful strike, which they knew or ought to have known, as a probable and reasonable consequence of their action, would cause others to engage in an unlawful strike, contrary to sections 81 and 83(1) of the Act;
- (3) *declares* that a refusal to work by employees on October 25, 1996 as part of a concerted effort to disrupt production at de Havilland in Metropolitan Toronto would constitute an unlawful strike, contrary to section 79 of the Act;

- (4) *directs* the responding party trade unions and anyone acting on their behalf to cease and desist from calling, authorizing, or threatening to call or authorize an unlawful strike;
- (5) *directs* the individual responding parties to cease and desist from counselling, procuring, supporting, encouraging or threatening an unlawful strike;
- (6) *directs* that CAW-Canada Local 673 and CAW-Canada Local 112 respectively, forthwith provide notice of the declarations and directions contained in this decision to their members who are employed by de Havilland in Metropolitan Toronto;
- (7) *directs* that the responding parties or anyone having notice of this direction refrain from engaging in an unlawful strike against de Havilland and refrain from any act which they know or ought to know will prompt other persons to engage in an unlawful strike;
- (8) *directs* that a copy of this decision be posted in the workplace for thirty (30) days.

5. The applicants (referred to collectively as “de Havilland”) were concerned about production which had been scheduled for Friday, October 25, 1996. Local 112 of the National Automobile, Aerospace Transportation and General Workers Union of Canada (CAW-Canada) (the “CAW”) represents the employees in the “plant” unit at de Havilland and Local 673 of the CAW represents employees in the “office” unit at de Havilland. It was common knowledge that October 25, 1996 had been targeted as a general day of protest in the Metropolitan Toronto area and there was no real dispute, based on the pleadings, that Locals 112 and 673 were supporting the position of their parent union, the CAW, in support of the holding of the “Days of Protest”.

6. The CAW, through its President, Basil Hargrove, and others, had made it clear that they sought to have employees represented by the CAW withdraw their labour on October 25, 1996. News reports identifying de Havilland and other workplaces where employees are represented by the CAW as being intended subjects of this action went undisputed in these proceedings. Local CAW officials at de Havilland met with representatives of de Havilland in the weeks prior to October 25, 1996 but the parties were unable to reach any kind of accommodation that would allow the employees involved to participate in the organized action without affecting de Havilland production. One object of the protest was clearly the disruption of production at de Havilland (along with other workplaces). Further, it was clear from a review of the pleadings that the trade union responding parties had threatened a work stoppage and that various individual persons, including officers and officials of the trade unions, had counselled and/or threatened a work stoppage.

7. At the hearing of this matter then, there was no real dispute as to the actual conduct and intentions of the responding parties. There was also no dispute that, in accordance with the terms of the collective agreements in place and the terms of the Act, that a work stoppage at de Havilland would, in the *normal* course, be an illegal strike, in violation of sections 81 and 83 of the Act, as any such work stoppage would occur during the life of those collective agreements.

* * *

8. In the first instance the responding parties argued that a total ban on “strikes” during the life of the collective agreement, regardless of the purpose, motives, duration, or circumstances of the action is not proportional to the legislative objective of the Act. The responding parties asserted that the Act must be read in a way to allow for political activity in accordance with the constitutionally protected right of freedom of expression in the *Charter of Rights and Freedoms*.

9. The result in this case, they argued, was to conclude that the encouraged or counselled activity would not constitute an illegal strike because of its political overtones and consequently no remedy would be available pursuant to sections 81 or 83 of the Act. This argument, as acknowledged

by the responding parties, was heard and dealt with at length by the Board in *General Motors of Canada Limited*, [1996] OLRB Rep. May/June 409.

10. The responding parties acknowledged that on this view, relief would arguably be available in some cases but not others depending on the facts. De Havilland noted that the effect of such an interpretation would be to introduce exceptions into an otherwise clear provision, with the effect that one would be unable to assess in advance whether certain activity would constitute an illegal strike or protected political expression; a result not conducive to good labour relations.

11. The decision in *General Motors, supra*, is currently the subject of a judicial review application. We saw no basis for drawing any different conclusion in the circumstances of this case. Consistent with that decision we were of the view that, even having regard to the provisions of the *Charter*, the intended interference with de Havilland production on October 25, 1996 through a concerted work stoppage would be an illegal strike. Consequently the conduct complained of, that is, the counselling or threatening etc. of such a work stoppage was, in our view, in violation of sections 81 and 83 of the Act.

12. The issue which the parties then addressed was the extent of any exercise of remedial discretion on the part of the Board. De Havilland sought a wide range of remedies set out at paragraph 6 of its application, including both declaratory and directory relief. The responding parties argued that it was inappropriate in the circumstances to provide any remedy, or at most, only declaratory relief.

13. The responding parties pleaded certain matters in respect of de Havilland's intention to close down on October 25, 1996 in any event. De Havilland, although disputing some of those particulars filed by the responding parties, did acknowledge that it had taken a decision that, in the event that it was picketed on October 25, 1996, it would shut down for the day. That decision was characterized as a kind of "plan B" and de Havilland argued that it should not be limited in asserting its legal rights simply because it had made a decision which would minimize the effect of, and its losses in the event of an illegal strike.

14. The responding parties argued that the conclusion as to the illegality of the action was the subject matter of judicial review and that the Board ought to exercise remedial restraint in order to protect against any inappropriate interference with constitutionally protected rights. They relied on the decision of the Board in *Domglas Ltd.*, [1976] OLRB Rep. Oct. 569 at paragraph 26 to argue that declaratory relief would be sufficient in that any disruption to production that might occur could be compensated for in damages through the collective agreement, whereas no adequate remedy was available for interference with constitutionally protected rights. Moreover they argued there was no evidence in this case that de Havilland would suffer any damages, as it had made a decision to shut down in any event.

15. The responding parties argued that injunctive relief was inappropriate as the Board ought not to assume in advance that declaratory relief would be inadequate. There was the suggestion that, given the employer's plan B, and the fact of discussions between the parties, a simple declaration might assist the parties without the need for injunctive relief. On that point we feel it fair to say that there appeared to be no doubt from the pleadings or in the minds of anyone in the hearing room as to the inevitability that de Havilland would be affected by the October 25 protest. The responding parties in effect relied on that inevitability by relying on de Havilland's decision to shut down in any event in support of their arguments. Finally, it was argued that limiting relief to a declaration would extend some recognition to the argued countervailing Charter rights.

16. The responding parties also suggested, in response to a question from a member of the panel, that if the day of protest is inevitable then it was bad labour relations for de Havilland to bring

this application and it would be bad labour relations for the Board to become involved, asserting that these parties were small players in the overall scheme of things. In response, de Havilland noted the undisputed pleadings which included a news report that the President of the CAW had identified de Havilland as the largest one-site manufacturing operation in the Metropolitan Toronto area and the largest CAW bargaining unit and therefore important to the protest.

17. We had no reason to believe that simple declaratory relief would result in any accommodation of de Havilland's concerns by the responding parties. The CAW, among others, was a party to the dispute in *General Motors, supra*, wherein the Board restricted itself to a declaration in respect of the same kind of action as complained of here. That related to the day of protest held in London, Ontario, a forerunner to the action in question here. In confining itself to declaratory relief after the fact, the Board in that case commented on General Motors failure to attempt to accommodate its employees' participation in the planned action. Here, de Havilland had made considerable efforts to attempt to reach some accommodation in advance of the action. The responding trade union parties had refused to agree, confirming their intention of engaging not only in political protest, but also interference with de Havilland's scheduled production.

18. The responding parties argued that injunctive relief ought not to be available unless de Havilland could establish that it would suffer irreparable harm and it had not. De Havilland responded by noting that had it merely remained silent as to its intended plan B, there would be no issue but that production was scheduled for October 25, 1996 and damages would flow. However, counsel also noted that the question of damages was not something the Board considered under section 100 in assessing injunctive relief.

19. Absent the particular circumstances leading up to this dispute, that is, the fact that it was but one aspect of a much larger and broader political action, there would be no doubt that de Havilland would be entitled to relief, including injunctive relief. Section 100 (and section 101) clearly contemplates the kind of injunctive relief sought by the use of the words, "may direct what action...a person,...(or) trade union...shall do or refrain from doing...with respect to...the threat of an unlawful strike". This relief is entirely consistent with the general prohibition against strikes or lock-outs during the life of the collective agreement and the statutory requirement for a grievance procedure, designed to maintain industrial stability in the face of disputes between the parties to the collective agreement. It is not necessary to affirmatively establish that irreparable or other harm will flow in order to obtain injunctive relief. The provisions recognize the inherent harm to the collective bargaining relationship and seek to avoid the consequences that might erupt as a result of either a concerted disruption of production or an illegal suspension of work by firstly making the nature of one's obligations clear in advance, and by restraining any illegal action.

20. We saw no reason not to grant both declaratory and directory relief in the particular circumstances, particularly in light of the attempt by de Havilland to accommodate the planned action and the responding parties' inability or unwillingness at that point to reach some agreement. In effect, the intention of interfering with production was an ongoing aspect of the activity complained of. See for example, *Hickeson-Langs Supply Company*, [1991] OLRB Rep. May 625, particularly paragraphs 32 to 35.

21. However, at the same time, the fact that de Havilland had decided to shut down for October 25, 1996 in any event also meant that some of the subtleties in the issue surrounding the granting of injunctive or directory relief were not dealt with. While de Havilland was entitled, in our view, to assert its legal position and obtain relief, we recognized that, regardless of any order of the Board, in all likelihood there would be no consequences arising from any injunctive or directory order as the plant would not be operating. Therefore issues concerning the extent of any injunctive or directory relief

were not addressed by the parties nor by the panel and the remedial orders ought not to be taken out of context as a result. (We also note that no attention was directed by the parties to whether or not there were sufficient facts pleaded in respect of each named responding individual, and the declarations and directions issued in a similarly “generic” way.)

2990-96-R Sharon Coslett and Marnie MacMillan, Applicant v. Service Employees Union, Local 268 Affiliated with the S.E.I.U., A.F. of L., C.I.O. and C.L.C., Responding Party v. Fort William Clinic, Intervenor

First Contract Arbitration - Practice and Procedure - Termination - Application to terminate union’s bargaining rights brought after four days of hearing in union’s first contract application - Termination applicants asking Board to allow termination application to proceed ahead of first contract application and asking Board to direct representation vote - Board deciding to proceed with first contract application

BEFORE: *Gail Misra*, Vice-Chair.

APPEARANCES: *Peter Hollinger* for the applicants; *Glen Chochla* and *Glen Oram* for the responding party; and *Fred Bickford* and *John Johnson* for the intervenor.

DECISION OF THE BOARD; December 24, 1996

1. This is an application for termination of bargaining rights filed pursuant to section 63 of the *Labour Relations Act, 1995*.

2. There are a number of other matters between the Service Employees Union Local 268 (the “union”) and the Fort William Clinic (the “Clinic” or the “employer”) already proceeding before the Board, and in particular, a hearing to determine whether the Board should direct the settlement of a first collective agreement by arbitration (Board File No. 2360-96-FC). Four days of hearing had been held in the first contract direction case by the time this application for termination of bargaining rights was filed. On the fifth day of hearing the applicants’ counsel appeared to make a motion that the Board should exercise its discretion to allow the termination application to proceed ahead of the first contract direction application.

3. The relevant sections of the Act are as follows:

43. (1) Where the parties are unable to effect a first collective agreement and the Minister has released a notice that it is not considered advisable to appoint a conciliation board or the Minister has released the report of a conciliation board, either party may apply to the Board to direct the settlement of a first collective agreement by arbitration.

• • •

(23) Despite subsection (2), where an application under subsection (1) has been filed with the Board and a final decision on the application has not been issued by it and there has also been filed with the Board, either or both,

- (a) an application for a declaration that the trade union no longer represents the employees in the bargaining unit; and
- (b) an application for certification by another trade union as bargaining agent for employees in the bargaining unit,

the Board shall consider the applications in the order that it considers appropriate and if it grants one of the applications, it shall dismiss any other application described in this section that remains unconsidered.

(24) An application for a declaration that a trade union no longer represents the employees in the bargaining unit filed with the Board after the Board has given a direction under subsection (2) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsection 63(2).

4. The applicants assert that the union has been unable to conclude a first collective agreement in 16 months, it has now got limited support among its membership at the Clinic, and that rather than seek a strike mandate it applied for a direction for first contract arbitration so as to avoid going to the membership for a vote. It is argued that it would be of value to the Board in deciding the direction for first contract application to know what level of support the union enjoys. While the union has made allegations of employer misconduct in this termination application, the applicants argue the Board should find that the union has not pleaded a *prima facie* case of employer wrongdoing. Therefore, it is suggested, the Board should order a vote to be held and that the vote should be counted.

5. The employer supports the position of the applicants and asks the Board to exercise its discretion pursuant to section 43(23) to hold the vote on the termination application even though the direction for first contract case has already begun. It was counsel for the employer's position that there was no requirement for the Board to complete the direction for first contract application, particularly where the employer claims the union has no *prima facie* case for the direction it is seeking.

6. The union argues against the termination application proceeding ahead of the direction for first contract application which has already begun. It was pointed out by the union that the employer had already made and lost a motion that the union had no *prima facie* case in the first contract case, so that it cannot now come back and attempt to have the Board revisit that issue when the evidence is being called on the merits.

7. It is the position of the union that there is no precedent for the Board allowing a termination application to supersede an extant direction for first contract application, and that it would be unfair and a breach of natural justice to permit it to happen in this case. In any event, the union has alleged employer misconduct in the initiation of this termination application, so that a hearing may need to be held and that matter decided before a vote could be held.

DECISION

8. In reaching a decision I have reviewed all of the parties' submissions and the jurisprudence submitted in support of the parties' respective positions. It would appear that there are two questions which may need to be answered in considering the applicant's motion: 1) should the termination application be permitted to supersede the application for direction for first contract arbitration; and, 2) if so, has the union, in its response, established a *prima facie* case for a hearing to be convened before the holding of a vote.

9. Section 43(23) is substantially the same as the provision considered and applied by the Board in *Co-Fo Concrete Forming Construction Limited*, [1987] OLRB Rep. June 828. In that case the Board had almost rendered its decision in a direction for first contract application when a termination application was filed with the Board. The Board found that it was not appropriate to suspend the continuation of the first contract declaration hearing to process the termination application.

10. In *Northfield Metal Products Ltd.*, [1990] OLRB Rep. March 302 the Board considered the order in which it would hear a first contract direction application and a termination application. There

had been three days of hearing held before a termination application was filed, with the support of 81% of the bargaining unit. As the Board noted in that case, the legislators had anticipated this type of occurrence when the first contract provisions were passed, and had therefore provided what was then section 40a(22) of the *Labour Relations Act* (which, as noted in paragraph 9, is substantially the same as section 43(23)). Unlike the situation before me, in that case the union did not contest the voluntariness of the petition filed in support of the termination application. The Board rejected the request to adjourn the first contract declaration application.

11. In exercising its discretion the Board has considered whether a hearing has commenced, whether the evidence is interrelated, whether a decision is about to issue, and the particular facts of a case. As the Board stated in *Venture Industries Canada, Ltd.*, [1990] OLRB Rep. May 625, when a hearing has commenced in a first contract declaration application and parties have given detailed evidence of negotiations, that represents an investment of time and money, and there is an expectation of resolution. The Board went on to say (at paragraph 12) that:

Leaving live issues unresolved is generally not healthy for labour relations unless there is a substantial reason for doing so. This expectation must also be viewed in light of the truism that "labour relations delayed is labour relations denied". .

12. In paragraph 15 the Board said:

Absent clear direction from the Legislature, we see no reason that we should consider the rights of the petitioners as superior to the rights of the trade union so as to constitute a sufficiently compelling reason to cause us to suspend the first contract hearing, as suggested by the employer and the petitioners. The union was duly certified by the Board after lengthy hearings and consideration of many issues. Although the petitioners assert that the union is no longer wanted by the employees, under the *Labour Relations Act* it is the exclusive bargaining agent with rights under section 40a. Section 40a contemplates that a termination application will get prior consideration to a first contract application only where the Board considers it appropriate that this should occur. If the Legislature had considered that the fact of an application alone put the union's bargaining rights in sufficient question to require a representation vote, it could easily have said so. It chose not to. We think this is in accord with the sound policy of allowing the Board to give weight to relevant labour relations considerations in each case when deciding what is appropriate.

13. While there have been substantial amendments made to the Act since these cases were decided, it is noteworthy that the Legislature chose not to change section 43(23). The Legislature can be taken to be aware of all of the other provisions of the Act, and although a new vote-based system was instituted and a stronger emphasis placed on workplace democracy issues, this provision has not changed. I can see no sound labour relations reason to change the direction taken by the Board in the jurisprudence outlined above.

14. In the case before me there have been four days of hearing before the termination application was filed. I have heard extensive evidence of negotiations, and the union has not yet finished putting in its evidence. I am of the view that it is most appropriate in the circumstances of this case to continue to hear the first contract direction application so that the parties to that application may have a resolution to that matter before the Board embarks on a consideration of the termination application. Having decided to proceed with the first contract direction application, it is unnecessary for me at this time to decide on any other issues related to the termination application.

2210-96-M Labourers' International Union of North America, Local 1059, Applicant v. The John Hayman & Sons Company Limited, Responding Party

Abandonment - Bargaining Rights - Conciliation - Construction Industry - Reference - Union certified in 1984 to represent construction labourers in ICI sector and all other sectors - Union subsequently entering into collective agreements covering labourers engaged in road and bridge building construction projects - Union in 1996 seeking to negotiate collective agreement covering labourers in other sectors - Employer asserting that it has not been active outside road and bridges construction and ICI sector - Employer objecting to appointment of conciliation officer in relation to bargaining for bargaining unit covering labourers in other sectors - Board finding no abandonment of bargaining rights and advising Minister of Labour that she has authority to make requested appointment of conciliation officer

BEFORE: *G. T. Surdykowski*, Vice-Chair, and Board Members *F. B. Reaume* and *J. Redshaw*.

APPEARANCES: *Carolyn Hart* and *Jim MacKinnon* for the applicant; *George Hayman* for the responding party.

DECISION OF THE BOARD; December 18, 1996

I

1. Pursuant to the provisions of section 115 of the *Labour Relations Act, 1995*, the Minister has referred the following question to the Board:

Does the Minister of Labour have the authority to make the requested appointment of a conciliation officer?

2. The "requested appointment of a conciliation officer" referred to in the Minister's question to the Board was made by the Labourers' International Union of North America, Local 1059, the union in this case. In that respect, the Minister's reference to the Board states as follows:

1. On July 26, 1996, the Union requested the appointment of a conciliation officer pursuant to section 18 of the *Labour Relations Act, 1995* ("Act"). According to the Application for the Appointment of a Conciliation Officer ("Application"), the Union is seeking to negotiate a first collective agreement.

2. According to the Application, the description of the bargaining unit is as follows:

All construction labourers in the employ of the Employer in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, and construction labourers engaged on all road and bridge construction projects, save and except non-working foremen and persons above the rank of non-working foreman. (emphasis added)

3. By letter dated August 6, 1996, the Employer objected to the appointment of the conciliation officer on the basis that it does not have employees in the sectors referred to in the Application.
4. In response, the Union by letter dated September 3, 1996 takes the position that the Union has not abandoned its bargaining rights and is entitled to seek conciliation for the bargaining unit described in paragraph 2 of this Reference.
5. On or about November 15, 1984, the Union was certified as bargaining agent for:

... all construction labourers in the employ of The John Hayman & Sons company Limited in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman. (emphasis added)

6. On or about January 28, 1985, the Union and the Employer entered into a collective agreement effective from January 1, 1984 to December 31, 1995.
7. The recognition clause in the collective agreement provides as follows:

The Employer recognizes the Union as the sole collective bargaining agency for *all its construction labourers engaged on all road and bridge construction projects* within the Counties of Middlesex, Bruce, Elgin, Oxford, Perth and Huron, save and except non-working foremen, office, clerical and engineering staff. **(emphasis added)** [sic]

8. By letter dated August 13, 1986, the Minister of Labour issued a 'No-Board' letter for the bargaining unit described in paragraph 7 of this Reference.

[emphasis throughout supplied]

3. The Minister then goes on to say that she is of the opinion that the circumstances raise a question regarding her authority to appoint a conciliation officer and she therefore refers that question to the Board for its advice. Attached to the Reference are several documents which pertain to the matter.

4. The Board processed this reference in accordance with its usual procedures in that respect. Pursuant to Rules 81 and 82 of the Board's Rules of Procedure, the union and the employer were directed to file written statements of representations, and copies of all relevant documents. A hearing was scheduled and held on December 11, 1996.

5. The purpose of the hearing was to hear the evidence and representations of the parties relating to the Minister's question to the Board. At the hearing, it was apparent that the material facts were not in dispute. Further, the employer's representative really had nothing to add to the written representations he had made.

6. Upon hearing what the employer's representative had to say, the Board found it unnecessary to hear from the union, and told the parties that its advice to the Minister would be that she *does* have the authority to appoint a conciliation officer as requested by the union.

II

7. In response to the union's request for a conciliation officer, the employer wrote to the Minister as follows:

We are in receipt of a copy of a letter addressed to Mr. Jim MacKinnon of the Labourers' Union Local 1059, dated August 1, 1996 attached.

This letter refers to a request for appointment of a Conciliation Officer to resolve what is purported to be a conflict in bargaining for Construction Labourers in sectors of the industry outside ICI and roads and bridges.

We have never had employees or work in the sectors referred to in the application, and are unaware as to why we should be served with such notices and paper work and potential costs for both us and your department of government.

Please advise why we should be addressed in this way.

8. It is not clear what the employer meant by the first paragraph of its response. In any case, it is apparent from the employer's subsequent written representations to the Board that it is the second paragraph which contains the basis for the employer's objection to the union's request.

9. It is apparent from the employer's written representations, and from its submissions at the hearing, that the employer is still unhappy about the fact that the union was certified by the Board in 1984, and about what it asserts were the circumstances surrounding that certification.

10. The certificate which the union obtained from the Board is dated November 15, 1984. It is now much too late to re-visit the Board's decision in that respect. In any case, there is nothing in the facts asserted by the employer which suggests that anything untoward occurred, or that it was inappropriate for the Board to certify the union. Further, the employer concedes that it subsequently entered into a collective agreement, albeit "reluctantly" with the union.

11. In that respect, by written agreement dated January 28, 1995, the employer and the union agreed as follows:

1. The Employer recognizes the Union as the sole collective bargaining agency for all its construction labourers engaged on all road and bridge construction projects within the Counties of Middlesex, Bruce, Elgin, Oxford, Perth, and Huron, save and except non-working foremen, office, clerical, and engineering staff.
2. The Employer agrees it is bound to and will comply with the terms and conditions of the Agreement between Labourers' International Union of North America, Local 1059 and Towland (London) 1970 Limited, Riverside Construction Limited, Stebbins Paving & Construction Limited, effective January 1, 1984 until December 31, 1985, and attached hereto.
3. Should the Employer undertake to do work that is commonly known as industrial, commercial and institutional construction it is agreed that the agreements between the Employer and the Employee Bargaining Agencies (E.B.A.) on all work within a building or excavation for a building shall take preference over this Agreement.

12. The employer asserts that it has not been active in other than the industrial, commercial and institutional ("ICI") sector of the construction industry, and in roads and bridges construction. More specifically, the employer asserts that it has neither had employees nor performed work in the residential sector. The union does not dispute this.

13. However, it is apparent that the employer has recently sought to obtain work, unsuccessfully to date, in the residential sector. For example, in or about April, 1996, the employer submitted a bid on the construction of a "residence" at the University of Western Ontario. It was apparent from what was said at the hearing that the employer intends to continue to seek work in sectors of the construction industry in which it has not previously been active, particularly the residential sector. It was also apparent that the employer thinks it shouldn't be obliged to bargain with the union in that respect, and that it should be up to it to decide how the work will be done; that is, union or non-union.

III

14. That is not how the Act works.

15. Twelve years ago, the union was certified as the bargaining agent of all construction labourers in the employ of the employer in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin in all sectors of the construction industry except the ICI sector (and save and except non-working foremen and persons above the rank of non-working foreman). Subsequently, the employer and the union entered into a collective agreement which was both larger and smaller in scope than the

certificate which the union had obtained from the Board. It was larger because the employer agreed to perform any work it obtained in the ICI sector under the Labourers' provincial agreement. It was smaller in that the only non-ICI work covered by the agreement was road and bridge construction work.

16. There is a theory that once an employer and trade union enter into a collective agreement which describes the bargaining unit which is covered by the agreement, the union's bargaining rights flow from that collective agreement, and any certificate which the trade union held in that respect has been "spent". This theory has been applied and has currency outside of the construction industry. However, both the Act and the Board have long recognized that things are different in the construction industry. The Act has long contained a part which is devoted exclusively to the construction industry (currently sections 126 to 168), and a provision (currently section 110(5)) requiring that the Chair designate a construction industry division of the Board to deal with construction industry matters. Accordingly, the Board has been organized into at least two divisions, one of which primarily deals with construction matters, and one of which deals primarily with non-construction matters. The Board's jurisprudence also reflects the Board's recognition of the differences between construction and non-construction labour relations.

17. One of the differences between construction and non-construction labour relations is that to the extent that the "spent certificate" theory applies at all in the construction industry, it does not apply merely because a trade union does not bargain a collective agreement which covers every sector of the construction industry. That is, whether a trade union is certified under what are now subsections 158(1) or (3) (which apply to designated employee bargaining agencies and their affiliated bargaining agents under the province-wide bargaining scheme in the Act), or subsection 158(5) (which applies to construction trade unions which are outside of the province-wide bargaining scheme), all non-ICI sectors are covered by a certificate. The fact that the employer did not have employees in one or more sectors of the construction industry prior to or at the time the application for certification was made, or that the employer does not intend to or is unlikely to have employees in one or more sectors of the construction industry does not affect the bargaining unit description in the certificate which the union obtains (if its application is successful). It has always been so. Whether the employer had employees in a single sector or in all sectors, the certificate has always been the same. That is, in an application under what is now subsection 158(1) of the Act, the trade union receives one certificate for a provincial unit in the ICI sector, and a second certificate covering all other sectors in the appropriate geographic area(s). Under subsection 158(3), the trade union receives a certificate for all sectors other than the ICI sector in the appropriate geographic area(s). Under subsection 158(5), the trade union receives an *all* sector certificate in the appropriate geographic area(s). (See, *Colonist Homes*, [1980] OLRB Rep. Dec. 1729; *Watcon Inc.*, [1981] OLRB Rep. Nov. 1697; and *Dagmar Construction Limited*, [1987] OLRB Rep. Apr. 480.)

18. Few construction industry employers are active in every sector of the construction industry. Most, including most general contractors, are active in one or perhaps a few sectors. Sometimes, construction employers expand their operations into other sectors, and sometimes they withdraw from a sector, perhaps temporarily or perhaps permanently. In the absence of a statutory provision which would require a different result, neither an employer's decision in this respect, nor the nature and ebb and flow of work in the construction industry can affect bargaining rights. Just as a trade union can obtain bargaining rights for an employer in a sector of the construction industry in which the employer has never had employees, a trade union will not lose bargaining rights with respect to an employer in a sector merely because the employer either continues to have no employees working in it, or the employer withdraws from the sector and temporarily or permanently ceases to have employees in it.

19. In order for a construction trade union to lose bargaining rights which it has obtained, the bargaining rights must either be terminated in accordance with the provisions of the Act, or the union

must be found by the Board to have abandoned its bargaining rights. Whether a trade union has abandoned bargaining rights is a question of fact which must be determined according to the circumstances of the particular case. (For a recent example of a construction case in which the Board dealt with the issue of abandonment, see *G.S. Wark Limited*, [1996] OLRB Rep. Sept./Oct. 811, Board File No. 0104-96-G, decision dated October 18, 1996.)

20. For over thirty years, the Board has consistently held that the failure to pursue bargaining rights for non-existent employees in a sector of the construction industry in which the employer has not been, is not, and appears to have no intention of being active in, does not suggest abandonment. A trade union cannot be expected to engage in academic collective bargaining exercises with employers with respect to non-existent/expected employees. (Nor is it likely that employers would appreciate being required to do so, as they would be if a trade union sought to exercise such bargaining rights.) Concomitantly, construction industry bargaining rights are not extinguished by the mere passage of time. (See, for example, *Streetsville Construction Limited*, [1965] OLRB Rep. Apr. 47; *Dravo of Canada Limited*, [1977] OLRB Rep. Sept. 568; *Inducon Construction (Northern) Inc.*, [1982] OLRB Rep. Mar. 390; *Barkman Builders Ltd.*, [1984] OLRB Rep. Apr. 565; *Ellis-Don Limited*, [1988] OLRB Rep. Mar. 279; *Elirpa Construction and Materials Limited*, [1994] OLRB Rep. Apr. 372.)

21. There is nothing in the materials before the Board which even remotely suggests that the union has abandoned any of the bargaining rights it obtained in 1984. The fact that it agreed to pursue the bargaining rights in only those sectors in which the employer was active does not suggest abandonment. Nor does the fact that the union did not force the employer to bargain a collective agreement in any sector in which the employer was not active, something which this employer would undoubtedly have protested as a waste of time and money, suggest abandonment. On the contrary, everything which is before the Board, including the union's attempt to pursue bargaining rights in the residential sector when it discovered that the employer had submitted a bid with respect to a project in that sector, suggest that the union has been vigilant in pursuing its bargaining rights.

IV

22. Subsections 18(1) and (2) of the Act provide that:

18. (1) Where notice has been given under section 16 or 59, the Minister, upon the request of either party, *shall* appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

(2) Despite the failure of a trade union to give written notice under section 16 or the failure of either party to give written notice under sections 59 and 131, where the parties have met and bargained, the Minister, upon the request of either party, may appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

[emphasis added]

In this case, the employer has not disputed the union's assertion (in paragraph 3 of its Request for Appointment of Conciliation Officer) that it gave the employer written notice to bargain on March 30, 1994. Accordingly, and because there appears to be no reason to doubt the continued existence of the bargaining rights with respect to which the union seeks conciliation, the Minister has the authority to make the requested appointment of a conciliation officer.

23. Before formally putting our answer to the Minister's question, we wish to correct a misstatement we made at the hearing. We stated that while we were satisfied that the Minister has the authority to appoint a conciliation officer, it is up to her whether or not she does so. In making that observation, we had in mind the discretion which the Minister has under section 21 of the Act regarding the

formation of a conciliation board. Section 18, which deals with the appointment of conciliation officers, seems to require the Minister to appoint one when she has the authority to do so.

V

24. In the result, our advice to the Minister, in response to her question to the Board is that: "Yes", the Minister of Labour has the authority to make the requested appointment of a conciliation officer.

2244-96-R United Food and Commercial Workers International Union, Applicant v. K-Mart Canada Limited, Responding Party

Certification - Practice and Procedure - Representation Vote - International union's previous certification application dismissed and one year bar imposed - Local of international union applying for certification six months later - Employer submitting that local union's application covered by the bar and that application should be dismissed - Employer asking that ballot box be sealed pending determination of the issue - Board declining to direct that ballot box be sealed - Board noting practical advantage of counting ballots in determining whether necessary to decide bar issue raised by employer

BEFORE: *K. G. O'Neil*, Vice-Chair, and Board Members *R. M. Sloan* and *H. Peacock*.

DECISION OF K. G. O'NEIL, VICE-CHAIR, AND BOARD MEMBER H. PEACOCK; November 5, 1996

1. This is an application for certification.
2. The Board finds that the applicant is a trade union within the meaning of section 1(1) of the *Labour Relations Act, 1995*.
3. It appears to the Board on an examination of the evidence before it, that not less than forty per cent of the individuals in the bargaining unit proposed in the application for certification were members of the union at the time the application was made. There is a difference in the numbers of employees in the bargaining unit given by the union and the responding party. However, the union filed cards for more than 40%, even using the employer's higher number.
4. The Board directs that a representation vote be taken of the individuals in the following voting constituency:

all employees of K-Mart Canada Limited employed in the City of St. Thomas, save and except department managers, persons above the rank of department manager, loss prevention officers and students employed in a co-operative work program.
5. The vote will be held on November 7, 1996. Other vote arrangements will be as determined by the Registrar and set out on the attached "Notice of Vote and of Hearing".
6. All individuals who had an employment relationship with the responding party in the voting constituency on October 31, 1996, the certification application filing date, are eligible to vote. Employees having an employment relationship on October 31, 1996 the certification application filing

date, include employees who were not at work on that date, so long as there is a reasonable expectation of their return to employment.

7. There is a minor difference in the wording of the bargaining units in the application and response, the word “employed” appearing after the employer’s name in the first line of the union’s proposed bargaining unit. It would not appear this has any effect on who would be in the bargaining unit. If any person appears to cast a ballot and is disputed by the parties due to any issue that is not apparent, that person shall be entitled to cast a ballot. Any ballot cast by such an individual shall be segregated and not counted until the Board so orders or the parties agree.

8. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the responding party.

9. The employer has raised an issue relating to a prior application for certification by Local 175 of the United Food and Commercial Workers noting that application was dismissed and a one year bar imposed by Board decision dated April 25, 1996. The employer submits that the applicant in this application should be covered by the bar, and thus this application should be dismissed. Further the employer requests that the ballot box be sealed pending the determination of this issue. As there is a practical advantage to counting the ballots, in that one would then know if the issue were necessary to decide, the majority of the Board is of the view the ballot box should be opened and counted and the issue dealt with, if necessary after the vote.

10. The responding party is directed to post copies of this decision and of the “Notice of Vote and of Hearing” adjacent to each of the posted copies of the “Notice to Employees of Application for Certification”. These copies must remain posted for 30 days.

11. Any party or person who wishes to make representations to the Board about any issue remaining in dispute which relates to the application for certification, including any matters relating to the representation vote, must file a detailed statement of representations with the Board and deliver it to the other parties, so that it is received by the Board within seven days (excluding Saturdays, Sundays and holidays on which the Board is closed) of the date on which the vote is taken.

12. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER R. M. SLOAN; November 5, 1996

1. I dissent.

2. The question of whether or not an affiliated union or in fact the same union in a different guise can apply for certification prior to the expiration date of a bar is of great significance and should be decided before a vote is taken, but once the vote has been ordered by the Board the ballot boxes should remain sealed pending the determination of this most important issue.

0548-96-U The Masonry Contractors Ontario, Greater Toronto Area on its own behalf and on behalf of its members (MCO) and The Individual Employers whose names are set out on Schedule B attached hereto, Applicants v. Labourers’ International Union of North America, Local 183 and Bricklayers, Masons Independent Union of Canada, Local 1 and The Masonry Council of Unions Toronto & Vicinity, Responding Parties v. Masonry Contractors Association of Toronto (“MCAT”), Intervenor

Construction Industry - Duty to Bargain in Good Faith - Unfair Labour Practice - Board deciding that unions breaching duty to bargain in good faith by pressing to impasse demand that employers represented by the Masonry Contractors Ontario, Greater Toronto Area ("MCO") include provision in collective agreements requiring them to make industry fund payments to rival Masonry Contractors Association of Toronto ("MCAT")

BEFORE: *G. T. Surdykowski*, Vice-Chair, and Board Members *F. B. Reaume* and *J. Redshaw*.

APPEARANCES: *Carl Peterson, O. Foster, Paul de Rose, Jack Prazeres* for the applicant; *S. B. D. Wahl, A. Dionisio* for the responding parties; *C. E. Humphrey, G. McGinnis, Joe De Caria, Louis Gregoris* for the intervenor.

DECISION OF G. T. SURDYKOWSKI, VICE-CHAIR, AND BOARD MEMBER F. B. REAUME; December 11, 1996

I

1. This is a complaint under section 96 of the *Labour Relations Act, 1995*. The applicant complains that the responding parties have violated sections 17, 71, 73(2) and 76 of the Act.

2. At the hearing of August 26, 1996, the parties asked the Board to deal with only section 17 "bad faith bargaining" issue to the exclusion of the various other issues raised, including the issue of the status of the Masonry Contractors Ontario, Greater Toronto Area ("MCO"). The parties agreed that these other issues remain "live" for all purposes and that their agreement to proceed in this way is without prejudice to right of any party to raise any of those issues in either this or other proceedings. Neither any phrasing or anything else in this decision should be taken as any indication of how the Board might determine any of those other issues.

II

3. The factual basis for the section 17 part of this complaint is not in dispute and is relatively straightforward.

4. For purposes of dealing with the section 17 issue, the MCO and the Masonry Contractors Association of Toronto ("MCAT") are rival employer organizations, within the meaning of section 57 of the Act, which represent individual employers in the bricklaying and masonry industry. The responding trade unions represent employees of employers which are members of the MCO and employees of employers which are members of the MCAT. Neither the MCO nor the MCAT is an accredited employer's organization within the meaning of the Act (sections 134 to 143). This is not a case in which the bargaining agency designation provisions (sections 152 to 168) apply.

5. The responding trade unions served notice to bargain with respect to their collective agreement or collective agreements due to expire on or about April 30, 1995. The parties bargained and went through the conciliation process. In or about late January, 1996, the responding parties began a lawful strike against all masonry contractors, including the employer members of both the MCO and the MCAT.

6. In mid-April, 1996, the responding trade unions and MCAT settled their differences and, on or about May 27, 1996, entered into a collective agreement effective April 16, 1996 to April 30, 1998. This collective agreement includes the following "Industry Fund" clause:

17. Industry Fund
- 17.01 (a) Each Employer bound by this Agreement who is not a member of the Masonry Contractors' Association of Toronto Inc. shall contribute twenty cents (\$0.20) per hour for each hour worked by each employee covered by this Agreement to the Association in compensation for the work done on behalf of the industry by the Association.
- (b) The Employer shall remit such contribution with other contributions under Article 2.03 of this Collective Agreement together with the supporting information as may be required on the reporting form.
- (c) The contributions together with the duly completed Employer Contribution Form are to be made by the fifteenth day (15th) of the month following the month for which payments are due.
- (d) The Union shall act as Trustee for the Masonry Contractors' Association of Toronto Inc. to collect such contributions and shall pay such contributions to the Masonry Contractors' Association of Toronto Inc. by the fifteenth day (15th) of the month following the month in which payments are made.
- (e) The Union agrees that any Collective Agreement which it enters into subsequent to the signing of this Agreement which deals with work of the type described in this Agreement shall contain an article containing the same provisions as those contained in this Article 17.
- 17.02 Having regard to the interest of the Masonry Contractors' Association of Toronto Inc. in ensuring that appropriate industry fund payments are made to the Association the Union agrees to provide to the Association copies of all remittance forms provided to the Union by companies that are not members of the Association performing work of the type covered by this agreement.

7. Article 17 is not a new provision. In the mid-1980's, the MCAT encountered problems with employer members violating its collective agreement with Bricklayers, Masons Independent Union of Canada, Local 1 ("Local 1"), by paying less than the negotiated wage rates. When the MCAT fined these employers, they refused to pay the fines, resigned their memberships in the MCAT, and carried on as before. The MCAT concluded that this undermined its ability to maintain the integrity of its collective agreement. Accordingly, in the collective bargaining which led to a collective agreement with Local 1 effective July 7, 1986, to May 31, 1988, the MCAT tried to counter this conduct by negotiating a Letter of Understanding which required Local 1 to only enter collective agreements with other employers that contained the same terms and conditions as the MCAT agreement, and contained a provision requiring employers who were not members of the MCAT to contribute to the MCAT Industry Fund. The MCAT-Local 1 collective agreement effective May 1, 1992 to April 30, 1995 contains substantially the same Article 17, the differences being the amount specified in Article 17.01 (a) and that there was no Article 17.02.

8. After reaching the Memorandum of Agreement (in mid-April 1996) which led to the collective agreement with the MCAT as aforesaid, the responding trade unions turned their attentions to the MCO, and on or about April 19, 1996, the following Memorandum of Agreement was entered into:

MEMORANDUM OF AGREEMENT

B E T W E E N:

THE MASONRY CONTRACTORS ONTARIO (G.T.A.)

ON BEHALF OF ITS MEMBERS AND (THE MCO)

THE INDIVIDUAL EMPLOYERS WHOSE NAMES ARE ATTACHED

HERETO AS SCHEDULE "A"

and

THE MASONRY COUNCIL OF UNIONS

TORONTO AND VICINITY BEING L.I.U.N.A., LOCAL 183 AND

BRICKLAYERS MASONS INDEPENDENT UNION OF CANADA, LOCAL 1

WHEREAS the Union holds bargaining rights for the Individual Employers and has been engaged in a legal strike of the Employers.

AND WHEREAS the MCO claims to be entitled to bargain on behalf of the Individual Employers.

AND WHEREAS the Union has entered into a Collective Agreement with the Masonry Contractors Association of Toronto Inc. on behalf of all its members, receiving the payment of industry funds by non-members of MCAT.

AND WHEREAS the MCO and the Individual Employers wish to enter into Collective Agreements with the Union on the same terms as those contained in the Unions' Agreement with MCAT, save and except those provisions respecting the industry fund in that the MCO and the Individual Employers who the Association claims to represent takes the position the Union's insistence on those provisions constitutes bad-faith bargaining.

AND WHEREAS the Union's position is that it does not wish to sign any Collective Agreement inconsistent with the agreement reached with MCAT, and does not necessarily agree that the MCO is entitled to bargain on behalf of any or all of its members.

AND WHEREAS the parties wish to provide for the orderly settlement of the strike and renewal of the Collective Agreements, subject only to MCO's and the Individual Employers it claims to represent, claim that the industry fund payments to M.C.A.T. constitutes bad-faith bargaining.

NOW THEREFORE the parties agree as follows:

1. The MCO on behalf of its members and the Individual Employers on their own behalf agree to execute agreements and for renewals of the Collective Agreements between them and the Union on the terms set out in the Memorandum of Settlement reached between the Union and MCAT forthwith and in any event before work continues on Thursday, April 25, *subject to the parties disagreement over the industry fund and their agreement set out below.*
2. It is understood and agreed that such renewals and/or agreements are without prejudice to any parties positions, and that such renewals and/or agreements shall constitute valid Collective Agreements, subject only to the remedial powers of the Board should it sustain MCO's and the Individual Employers it claims to represent, position with respect to the industry funds.
3. MCO agrees that it will not object to MCAT and/or the Bureau participating at any hearing held by the O.L.R.B. to deal with this issue.

4. Should the O.L.R.B. determine that the Union's insistence upon the inclusion of the MCAT industry fund in the Collective Agreements constitute bad-faith bargaining, MCO agrees that an amount equivalent to the industry fund payments, will be required from its members to be paid to the MCO.
5. The MCO agrees to file its bad-faith bargaining complaint forthwith and in any event within 30 days hereof. The Union agrees to hold all industry fund payments received from MCO members in trust pending the Board's decision.
6. MCO agrees not to solicit non-members pending the Board's decision.
7. No damages will be claimed in the Board proceedings.

DATED at North York this 19th day of April, 1996.

(emphasis added)

9. In effect, the MCO and the responding trade unions agreed to a collective agreement with the same terms and conditions as in the MCAT agreement with the exception of Article 17. The inclusion of this provision would require MCO employers to contribute money to the MCAT Industry Fund. The responding trade unions were adamant that this provision had to be included in the MCO agreement before they would end their strike against MCO employers. The MCO refused to agree to such a provision, and took the position that the responding parties demand in that respect was unlawful. The parties entered into the aforesaid Memorandum of Agreement in order to end the strike but have the legality of the demand determined by the Board.

III

10. Section 17 of the Act provides that:

17. The parties shall meet within 15 days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.

11. As cast by counsel, the narrow issue before the Board at this point is this: is it a breach of the section 17 obligation to bargain in good faith for a trade union to press to impasse a demand which would require an employer which is a member of one employer organization to make financial contributions to a fund operated by another employer's organization of which it is not a member?

12. The MCO submits that the answer to the question is "yes", and that the responding trade unions' conduct in pressing its Article 17 demand to impasse constitutes bad faith bargaining. Counsel argues that the subjective motivation for the demand is not important in this case. Counsel agrees that it is not improper to make such a demand, or to bargain over it, or for parties to agree to it. He submits, however, that it is unlawful to press such a demand to impasse, particularly where, as in this case, it is the only remaining issue between the collective bargaining parties, because it is inconsistent with the scheme of the Act and the underlying principles of representation and free collective bargaining. Counsel argues that section 57 of the Act contemplates voluntary employer organizations, and that only an accredited employers organization can obtain anything from an employer which is not a member (so long as that employer is covered by an accreditation order of the Board). Although he concedes that he has been unable to find any cases directly on point, counsel refers to the following Board decisions in argument: *United Brotherhood of Carpenters & Joiners of America*, [1978] OLRB Rep. August 776; *Radio Shack*, [1985] OLRB Rep. December 1789; *Bruce Henderson Limited*, [1977] OLRB Rep. August 480; *Elirpa Construction and Materials Limited*, [1994] OLRB Rep. July 838; *Burns Meats Ltd.*, [1984] OLRB Rep. August 1049; *Toronto Star Limited*, [1979] OLRB Rep. August 811; *Brantford Expositor*, [1988] OLRB Rep. July 653.

13. Counsel for MCAT concedes that Article 17 may have the effect of “encouraging” masonry employers to become members in the MCAT, but he argues that it doesn’t *require* any employer to join the MCAT, and that the MCAT is entitled to use its bargaining power and place in the industry to further the interests protected by Article 17 in its collective agreement with the responding trade unions. Counsel submits that this is merely a commercial case where two employer organizations are seeking a commercial advantage against each other, and that it raises no issue with which the Board ought to be concerned. Counsel submits that just as a trade union can strike on wages, it can strike on this issue, that it has nothing to do with the scheme of the Act generally, or with representation rights in particular, and that no labour relations interest is affected by the demand in issue. Counsel submits that there is nothing in the Act which prohibits an employer which has the clout to do so, from requiring employers who benefit from its activities to pay for that benefit.

14. Counsel for the responding trade unions also submits that an employers organization is entitled to look after its own interests and he wondered whether a “no industry fund” demand could be pressed to impasse (by a trade union). Counsel submits that the responding unions were under a contractual obligation to make and press the demand in issue and that doing so is not inconsistent with anything in the Act. Counsel says that the MCO has in effect taken the MCAT agreement and it should therefore “pay the freight” as required by Article 17, and that there is nothing improper about requiring MCO employers to do so, just as a trade union is entitled (under the legislated “Rand formula” in section 47 of the Act) to require that a collective agreement include a provision requiring non-member bargaining unit employees to pay union dues to it. Counsel referred to the Board’s decision in *J. G. Rivard Limited*, [1980] OLRB Rep. July 1009 and *Teskey Construction Co. Ltd.*, [1981] OLRB Rep. January 124, and submits that, in this case, the MCAT has followed the suggestions made in the *Teskey* decision.

15. There is no issue concerning the propriety of anything negotiated or agreed to between the responding trade unions and the MCAT. The MCAT is not accused of bargaining in bad faith. The responding trade unions are so accused, but in their dealings with the MCO, not in their dealings with the MCAT.

IV

16. “Industry funds” are raised by fees imposed by employers’ organizations on employers to fund both the negotiation and administration of collective agreements they are concerned with, and the employers’ organizations’ activities in their industry. Both generally and in this case the payments are made by employers to the employers’ organization and are calculated on the basis of the number of hours the employees of the employer work under the applicable collective agreement. It is an employer issue. This case does not raise an issue with respect to industry funds generally, or with respect to industry funds which require different levels of contribution by employers depending on whether or not they are members of the employer organization which operates the fund.

17. The question before the Board is, as set out above (in paragraph 11): can a trade union bargain to impasse, or take or continue a strike, a demand that employers which are members of one employers’ organization make industry fund payments to another employers’ organization? The specific question in this case is whether the responding trade union’s demand that the MCO include Article 17 from the MCAT agreement in the collective agreement between the MCO and the responding trade unions is one which could be the basis for continuing the strike in which the responding trade unions were engaged against members of the MCO.

18. First, we reject out of hand the responding trade unions’ suggestion that there was no impasse. Clearly, there was an impasse on the Article 17 issue. In the Board’s view, the parties dealt with this in a sensible way. To accept the responding unions’ argument would be to invite parties to

continue a labour relations conflict while litigating an issue before the Board. The Board is here to try to assist parties to a resolution of labour relations disputes, not to encourage conflict to continue.

19. Second, it is no answer to the complaint for the responding trade unions to say that they were under a contractual obligation to do what they did. Contractual agreements or obligations are always subject to the Act, which no parties can contract out of. Consequently, while the responding trade unions' collective agreement obligations to the MCAT may provide an explanation for their conduct, and may place them in an awkward position, they do not necessarily excuse them from their section 17 obligation to bargain in good faith with the MCO.

V

20. It is well established that one of the purposes of the section 17 obligation is to reinforce an employer's obligation to recognize and bargain with the trade union which holds bargaining rights for its employees, and to require both the employer and the trade union to approach collective bargaining with a view to making a collective agreement, by engaging in a rational and informed negotiating process to that end.

21. The Board has found a violation of the obligation to bargain in good faith when demands by a trade union that its bargaining rights be expanded, demands by an employer that the trade union's bargaining rights be reduced, demands for a "check-off" provision which is less comprehensive than that contemplated by section 47 of the Act, and demands concerning work jurisdiction have been pressed to impasse. Such demands may be made and bargained, but must be withdrawn when a strike or lockout becomes imminent. That is, such demands cannot be bargained to impasse, or, to put it another way, cannot be the basis for a strike or lockout.

22. In some jurisdictions (The National Labour Relation's Board in the United States comes to mind) there has developed a class of "illegal demands" which are deemed to constitute bad faith bargaining independent of any other breach of the applicable legislation. We observe that the experience with this approach has not been a particularly satisfactory or productive one, both because of the litigation it has spawned and the effect it has had on collective bargaining relationships.

23. As a general matter, the Board has declined to follow this approach. For example, the expansion or reduction of bargaining rights cannot be bargained to impasse because the Act provides the means by which bargaining rights are obtained or lost (and while the Act provides for voluntary recognition and contemplates the abandonment of bargaining rights, the legislation as a whole operates to prohibit either of these from being forced upon a party outside of the statutory certification or termination process); a trade union can demand the Rand formula (outside of the construction industry) because section 47 of the Act says it can; and parties cannot bargain work jurisdiction to impasse because the jurisdictional dispute provisions in section 99 of the Act provide the mechanism for resolving such issues (although "no subcontracting" demands, which may have a similar effect, can be bargained to impasse).

24. The principles of free collective bargaining have long been enshrined in the Act and are certainly no less important to the scheme of the current Act. In applying these principles, the Board has determined that it is appropriate to, as much as possible, leave collective bargaining parties to create their own bargaining process and make their own deals, and if they find it necessary to do so, to resort to economic sanctions, within the framework of the Act. (*Devilbiss (Canada) Ltd.* [1976] OLRB Rep. March 49.) Indeed, the Board's experience from many years of administering and adjudicating disputes under the Act, as amended from time to time, teaches that the best collective bargaining is free collective bargaining. The best foundation for a good collective bargaining relationship is laid when parties are left to make their own deals. (Of course, leaving the parties to their own devices may result in a

situation where a collective bargaining relationship may founder or even die, but the Act serves only to encourage and facilitate collective bargaining, not to guarantee any particular results.)

25. In the result, although a party will not necessarily have to link the bargaining conduct complained of with a breach of another provision of the Act (that is, between the bargaining conduct and some other right, obligation or prohibition in the Act) in order to establish a breach of the obligation to bargain in good faith established in section 17, it will generally have to do so.

26. As far as we are aware, the only circumstances in which no such connection has been made are the “offer and acceptance” cases. In *Sparton of Canada Limited*, [1985] OLRB Rep. Sept. 1420, for example, the employer offered to extend the collective agreement which had been in effect between the parties without any changes, which offer the union accepted, after the employer changed its mind but before it had withdrawn the offer or otherwise communicated the change in its position to the union. The Board held that notwithstanding that the employer had acted without *mala fides*, the employer could not be permitted to withdraw its offer after it had been accepted, and the Board directed the employer to enter into a collective agreement which reflected the offer which the union had accepted. Cases like this merely stand for the proposition that an offer which is accepted before it is withdrawn constitutes a binding contract between the party making the offer and the party accepting it, a principle which is fundamental both to the collective bargaining process, and to the law of contracts generally.

VI

27. In this case, the MCO alleges that the responding trade union’s bargaining position with respect to Article 17 “constitutes a violation of sections 17, 71, 73(2) and 76 of the Act”. In argument, the MCO also referred to section 57 and the accreditation provisions in sections 134 through 138 of the Act.

28. In effect, the MCO asserts that by insisting that Article 17 be included in the MCO agreement and pressing that demand to impasse, the union’s have improperly interfered with the administration of the MCO and have interfered with the MCO’s representation of its members by seeking to compel its members to leave it and join the MCAT. The MCO offered the analogy of a trade union requiring that an employer deduct union dues from non-member employees that are not in any bargaining unit it represents as well as from non-member employees in a bargaining unit which the union does represent. (Perhaps a closer analogy is an employer requiring a trade union to agree to a provision which would have the effect of requiring employees represented by that trade union to remit dues to another trade union with which the employer has a collective agreement.)

29. Our first reaction is that it is somehow wrong for a trade union to insist that members of one employer organization agree to pay fees to another employer organization as a condition precedent to ending a strike. But whether it is “somehow wrong” is not the issue. The question is whether it constitutes a breach of the *Labour Relations Act, 1995*.

30. Sections 70, 71, 73(2) and 76 of the Act provide that:

70. No employer or employers’ organization and no person acting on behalf of an employer or an employers’ organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer’s freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

71. No trade union and no person acting on behalf of a trade union shall participate in or interfere with the formation or administration of an employers’ organization or contribute financial or other support to an employers’ organization.

73.(2) No trade union council of trade unions or person acting on behalf of a trade union or council of trade unions shall, so long as another trade union continues to be entitled to represent the employees in a bargaining unit, bargain with or enter into a collective agreement with an employer or an employers' organization on behalf of or purporting, designed or intended to be binding upon the employees in the bargaining unit or any of them.

76. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

[emphasis added]

31. It is not apparent that section 73(2) has any application in this case. Nothing which the responding trade unions have done could be construed as interfering with another trade union's bargaining rights. There appears to be no other trade union on the scene.

32. The real issue seems to be whether the union's bargaining conduct constitutes "intimidation or coercion" which is contrary to section 76, or amounts to interference in the administration of the MCO, or perhaps improper support for the MCAT, contrary to section 71 of the Act.

33. Not all intimidation or coercion is unlawful under the Act. For example, employing economic sanctions is intended to be coercive and often is. It can also be intimidating, but it is not unlawful if it is done during a permitted time. Similarly, mere persuasion is a form of coercion, and a suggestion that certain consequences may follow upon certain acts, may be intimidatory, but will not necessarily amount to intimidation or coercion within the meaning of section 76.

34. Assuming that an employer can be a "person" within the meaning of section 76, this provision appears on its face to apply equally to everyone to whom the Act applies. Similarly, at first glance, section 70, which prohibits employers from participating or interfering in the formation, selection or administration of a trade union, appears to be analogous to section 71. But this bears closer scrutiny.

35. The Act establishes a structure of labour relations rights, duties and prohibitions for employees, trade unions and employers who are covered by it. But this does not necessarily mean that the rights, duties and prohibitions which apply to each of employees, trade unions and employers are congruent. That is, it is not necessarily the case that the rights, duties and obligations which the Act creates for one are also created for the other two or either of them.

36. This should come as no surprise, particularly when one recalls the genesis and development of labour relations legislation, and particularly the *Labour Relations Act*, in this province.

37. Prior to 1943, there was nothing resembling the *Labour Relations Act* as we know it today. Trade unions were not recognized as legal entities. On the contrary, they were considered to be unlawful combinations. Employees had no recognized right to bargain collectively with employers.

38. In 1943, the government of Ontario made one of the first attempts in Canada to construct a scheme for compulsory collective bargaining. The *Collective Bargaining Act, 1943* abolished the common law doctrines of conspiracy and restraint of trade as applied to trade unions. This legislation recognized trade unions as legal entities for collective bargaining purposes, and gave employees the right to join and participate in the lawful activities of trade unions.

39. In 1947, the *Labour Relations Board Act, 1947* created the Board, and was followed the next year by the *Labour Relations Act, 1948*, and in 1950 by the *Labour Relations Act, 1950*. Although

it had some other limited powers, the Board's major function at that time was to deal with applications for certification.

40. In succeeding years, the rights of employees and trade unions, and the Board's powers increased incrementally. By 1975, the Board's powers under the *Labour Relations Act* had been expanded to include the power to hear complaints that rights or obligations under the Act had been violated, and to provide labour relations remedies for breaches of the Act. Since 1975, the Act has been amended many times: in 1980, 1983, 1984, 1986, 1990, 1991, 1993 (Bill 40), 1994 (Bill 80) and most recently in November, 1995 (Bill 7). The striking thing about the history of the *Labour Relations Act* in this province, is that the fundamental purposes of the legislation have remained the same throughout; that is:

- (a) to ensure the right of employees to freely choose whether or not to join a trade union, and if they choose to do so, to bargain collectively with their employer through that trade union; and
- (b) to facilitate the orderly and expeditious resolution of workplace disputes.

This has been accomplished by structuring a legislative scheme which establishes the means by which bargaining rights can be obtained or lost, primarily based upon some expression of the wishes of employees; by providing a structure which provides some guidance with respect to collective bargaining, and which requires that workplace disputes during the course of a collective agreement be resolved through a grievance and arbitration process without resort to economic sanctions; and by requiring trade unions to represent employees for whom they hold bargaining rights fairly. This remains the case under the current Act, and the focus remains on the rights of employees and trade unions, primarily as against employers. In effect, the rights of employees and trade unions under the Act have been created by altering or limiting the historical rights of employers. (Of course the Board's jurisprudence demonstrates that the rights of trade unions are limited as well. This is why a trade union cannot press to impasse a demand that its bargaining rights be expanded any more than an employer can press to impasse a demand that such bargaining rights be reduced.)

41. In addition to the development of the legislation, the Board's jurisprudence also demonstrates why this is the case. The vast majority of unfair labour practice complaints have been brought by trade unions or employees. More specifically, we are aware of no previous case in which an employer or an employers' organization has alleged that a trade union has acted in a manner contrary to section 76 with respect to membership in an employers' organization. Complaints that section 76 has been breached are sometimes made by employees, but generally they are made by trade unions. Similarly, we are unaware of any previous complaint by an employers' organization that section 71 has been breached by a trade union. Complaints that section 70 has been breached by an employer are legion, and are often made in relation to an application for certification or organizing activity.

42. Returning to the analogy suggested by the MCO (see paragraph 28 above), though no employer could reasonably expect a trade union to agree to such a demand, it is not apparent that there is anything which prohibits an employer from making it. Pressing such a demand to impasse, however, is another matter. Doing so may well be unlawful, but not because it interferes with the administration of a trade union. Rather, it may tend to undermine the trade union and interfere with the representation of employees by the trade union, which is prohibited by section 70 of the Act.

43. This highlights a significant difference between section 70 and section 71. Section 70 prohibits employers from interfering in the formation, selection or administration of a trade union, *or with the representation of employees by a trade union*. Section 71 does not contain the latter prohibition. This difference must mean something, and what it means is that it is only when a trade union interferes

in the formation or administration of an employer's organization, or improperly offers support to an employer's organization that its conduct runs afoul of section 71.

VII

44. In this case, the Board is satisfied that the responding trade unions considered themselves to be under a contractual obligation to press their Article 17 demand to impasse if necessary. It also seems likely that they considered it in their general interests to do so. The MCO conceded that the responding trade unions were not motivated by improper considerations. But it is not the responding trade unions' subjective intent which is important or in issue.

45. It is true that there is nothing in Article 17 which requires that the MCO itself do anything, either administratively or otherwise. Nor does anything in Article 17 require employer members of the MCO to join the MCAT. It may, as the responding trade unions and the MCAT conceded, encourage MCO members to do so, but there are any number of collective bargaining demands which would have the same effect which can clearly be bargained to impasse. (We could give examples, but we will not because we do not think it would be helpful or beneficial to the labour relations involved in this case to do so.) There is nothing necessarily improper in a trade union preferring to deal with one employers' organization over another, or from advancing bargaining demands which would tend to make membership in one employer's organization more appealing to employers than non-membership or membership in another employers' organization.

46. A demand like the Article 17 demand in this case, is likely to undermine the representation of employers by an employer's organization. But it is only when a trade union interferes with the administration of an employers' organization, or improperly contributes financial or other support to an employers' organization, that it comes up against the section 71 prohibition against such interference. The question is whether the responding trade unions' Article 17 demands do so.

VIII

47. Counsel for the MCO waxed somewhat eloquent when he argued that the effect of Article 17 is "taxation without representation". Nevertheless, it is true that including Article 17 in the MCO agreement would require MCO employers to pay a fee to MCAT without allowing them any input into the administration of those funds, and without any direct benefit from the use of those funds. A significant part of the purpose of the MCAT industry fund is used to pay MCAT's costs in negotiating and administering the *MCAT agreement*. Even if the MCO agreement is identical in every way (except for Article 17) to the MCAT agreement, the MCAT's activities in that respect have nothing directly to do with the negotiation of the MCO agreement, and nothing at all to do with administering the MCO agreement. The MCAT's industry activities are designed to further interests of *its* members, and not the interests of MCO employers (or other employers) which are not its members. Whatever indirect or collateral general positive effects the MCAT's activities might have in that respect on non-MCAT masonry contractors, these effects are just that: indirect or collateral.

48. Further, to the extent that any indirect or collateral effects of the MCAT's activities are beneficial to employers which are members of the MCO, they are unintended. As competing employers' organizations, the MCAT and the MCO are not interested in helping each other or each others members. On the contrary it is apparent that the MCAT would like to see the MCO gone. It is likely that the MCO feels much the same way about the MCAT, but at the very least it wants nothing to do with the MCAT.

49. In these circumstances, it is somewhat disingenuous to suggest that the MCO should "pay the freight" for incorporating the terms of the MCAT collective agreement into its own agreement. The fact that, with the exception of the disputed Article 17 of the terms of the MCO agreement are identical

to those in the MCAT agreement tends to benefit the MCAT as well, and also tends to provide stability in the industry. Further, the MCO did not arrive at the MCO agreement all by itself. The responding trade unions, at the insistence of the MCAT through Article 17 in the MCAT (primarily an employers' organization provision) were full participants in achieving that result.

50. In any event, there are two separate collective agreements in play. The MCO will have to administer its own agreement. At the same time, the MCO will have no say or other role in the administration of the MCAT agreement. Why should the MCO be required to "pay the freight", or anything at all, to help or defray the expenses of a rival employers' organization with respect to a collective agreement it has nothing to do with, particularly when it is clear that one of the objects of the MCAT is to eliminate the MCO and occupy the employer part of the field in the industry?

51. Further, whatever duties the MCAT owes to its members, it is not apparent that it owes anything to employers which are not its members, and particularly to employers which are members of a rival employers' organization (in this case, the MCO). Consequently, the Rand formula analogy is not an appropriate one since a trade union has rights, duties and obligations with respect to all employees in a bargaining unit it represents, whether or not they are its members. (And we note that section 47, the Rand formula provision, does not apply in the construction industry.) This analogy may be (but isn't necessarily) raised by Article 17 in the context of the MCAT agreement itself in that non-member employers bound by *that agreement*, that is, by the MCAT agreement (rather than by a separate agreement which contains identical provisions) are required to remit industry fund "dues" to the MCAT industry fund, just as non-member employees covered by the collective agreement in which a section 47 provision is included are required to pay union dues to the trade union. It is not raised outside of the MCAT agreement, and specifically not under any MCO agreement since the MCAT has nothing to do with such an agreement.

52. The effect of section 57 of the *Labour Relations Act, 1995* is to recognize non-statutory or unaccredited voluntary employers' organizations as legitimate collective bargaining entities under the Act. The responding trade unions have chosen to bargain with the MCO as the collective bargaining representative of certain masonry employers with respect to which they hold bargaining rights, thereby recognizing the MCO as a collective bargaining partner.

53. Collective agreements set out the rights, privileges, duties and obligations which govern the labour relations of the parties which are bound by them. Including an industry fund provision in the collective agreement creates a right in an employers' organization to obtain dues and an obligation in individual employers to pay them. But how can an employers' organization agree with its trade union bargaining partner to create such a right-obligation relationship with employers which are not its members (and indeed are members of a rival employers' organization) which it does not and has no right to represent, and which are not bound by the actual collective agreement between that employers' organization (here the MCAT) and the trade union (here the responding trade unions), unless it has the consent or agreement of such non-member employers? In our view it cannot.

54. If it cannot do so for individual non-member employers who have not agreed to be bound by the employers' organization's agreement (as opposed to a separate but identical agreement without the operative "dues" or industry fund provision), how can it do so for employers which are members of a separate, competing employers' organization? It cannot.

55. With respect, the Board's decisions in *J.G. Rivard Limited, supra*, and *Teskey Construction Co. Ltd., supra*, do not stand for the proposition suggested by counsel for the responding trade unions. First, *J.G. Rivard Limited, supra*, was a case which dealt a provincial collective agreement under the statutory provincial bargaining scheme established for the ICI sector of the construction industry, which gives employers' organizations which are the designated employer bargaining agencies rights with

respect to members and non-members. Second, in *Teskey Construction Co. Ltd.*, *supra*, a case which dealt with a collective agreement outside of the ICI sector, the Board concluded that an employer organization could not collect industry funds from either a non-member employer bound by a separate “like agreement”, or from the trade union which was their mutual collective bargaining partner. That is, in the absence of consent or agreement, an employers’ organization cannot demand industry fund dues from employers which it does not represent. Accordingly, an employers’ organization cannot require non-member employers which it does not represent to pay such dues through the instrument of their mutual collective bargaining partner.

56. If an employers’ organization cannot impose such a requirement, how can a trade union press a demand for one to impasse? In our view it cannot.

57. When a trade union demands that members of one employers’ organization help pay for the collective bargaining activities and administration of a rival employers’ organization, refuses to accept a refusal to do so, and takes the demand to impasse, the trade union acts unlawfully. This is what the responding trade unions did in this case. By making payment into the MCAT industry fund a strike issue in their negotiations with the MCO, the responding trade unions interfered with the administration of the MCO, and gave improper support to the MCAT, contrary to section 71 of the Act. What greater interference could there be than trying to force the MCO to encourage its members to leave it? What greater support could a trade union give an employers’ organization than helping drive a rival employers’ organization out of business and off the field? As such, this conduct also constitutes a breach of section 17.

58. In the alternative, and even if this conduct did not constitute a breach of section 71, the Board is satisfied that it nevertheless constitutes a breach of section 17. In pressing their Article 17 demand to impasse in this case, the responding trade unions were in effect requiring the MCO to finance the activities of the MCAT to its own detriment. As reluctant as we are to venture down the road of free-standing breaches of section 17, a trade union cannot be allowed to take to impasse demand which has nothing directly to do with the collective bargaining relationship, and where the effect of such a demand is to force an employers’ organization which is its collective bargaining partner to contribute to its own demise for the benefit of a rival employers’ organization. It may be that taking other demands to impasse (such as high wage demands, for example) will likely have similar impact. Whatever the motivation for such other demands (which may also put an employer or employers’ organization out of business), there is nevertheless a direct relationship between those demands and the collective bargaining relationship, and no direct relationship to another, separate collective bargaining relationship. Just as it is lawful to avoid income tax but unlawful to evade it, some means of achieving a labour relations goal will be lawful, while other means of achieving the same goal will not.

59. In the result, the Board finds that pressing the Article 17 demand which the MCO would not acquiesce to would, in the circumstances of this case amount to a failure to bargain in good faith, contrary to section 17 of the Act.

60. Normally, the Board would proceed to make the appropriate declarations and orders. However, there are other issues which must be disposed of before that can happen.

61. The Registrar is therefore directed to schedule a hearing for the purpose of dealing with the remaining matters in issue.

DECISION OF BOARD MEMBER J. REDSHAW; December 11, 1996

1. I dissent.

2. The Labourers are caught between two warring factions in the masonry business.
 3. If (as the majority has found) the Labourers have engaged in bargaining in bad faith, they were put in an awkward position by MCO and MCAT. Who was to be the beneficiary of this scheme? MCAT should not be held blameless in this case. They are as much at fault as the Labourers.
 4. If I were negotiating on behalf of the Labourers I would not agree to collect industry funds for either MCO and MCAT until they settle their differences.
 5. Because of the circumstances in this case I would not have found that the Labourers had bargaining in bad faith.
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3154-95-OH Patricia Musty, Complainant v. Meridian Magnesium Products Limited, (“Meridian”), Responding Party

Health and Safety - Employee alleging that she was penalized for complaining about sexual harassment in the workplace in violation of Occupational Health and Safety Act (OHSA) - Board finding that sexual harassment arguably covered by OHSA, but that there is also a good argument that it is not - Board also finding that sexual harassment central to jurisdiction and expertise of Ontario Human Rights Commission and to tribunals established under Ontario Human Rights Code - Board deferring to procedures of the Code and the Commission and exercising its discretion under section 50(3) of the OHSA not to inquire into complaint

BEFORE: *R. O. MacDowell*, Chair.

APPEARANCES: *Harry Kopyto* and *Patricia Musty* for the Complainant; *Cheryl A. Edwards* and *W. Kammerer* for the Responding party.

DECISION OF THE BOARD; December 17, 1996

What this case is about

1. This complaint is about sexual harassment in the workplace, and whether, in the particular circumstances of this case, Ms. Musty can seek a remedy under the *Occupational Health and Safety Act* (“OHSA”). The complaint comes before the Board under section 50 of the OHSA, which reads as follows:

50.-(1) No employer or person acting on behalf of an employer shall,

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations or in an inquest under the Coroners Act.

(2) Where a worker complains that an employer or person acting on behalf of an employer has contravened subsection (1), the worker may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Ontario Labour Relations Board in which case any regulations governing the practice and procedure of the Board apply with all necessary modifications to the complaint.

(3) The Ontario Labour Relations Board may inquire into any complaint filed under subsection (2), and section 96 of the *Labour Relations Act 1995*, except subsection (5), applies with all necessary modifications as if such section, except subsection (5), is enacted in and forms part of this Act.

(4) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection (2), sections 110, 111, 114, 116 and 117 of the *Labour Relations Act 1995* apply with all necessary modifications.

(5) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection (2), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection (1) lies upon the employer or the person acting on behalf of the employer.

(6) The Ontario Labour Relations Board shall exercise jurisdiction under this section on a complaint by a Crown employee that the Crown has contravened subsection (1).

(7) Where on an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection (2), the Board determines that a worker has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances.

(8) Despite subsection (2), a person who is subject to a rule or code of discipline under the *Police Services Act* shall have his or her complaint in relation to an alleged contravention of subsection (1) dealt with under that Act.

[emphasis added]

2. Section 50 is the so-called “no reprisal” provision of the OHSA, which protects employees from being penalized because they have acted in compliance with the OHSA or because they have sought to enforce the OHSA. A complaint under section 50 is dealt with by the Board much like an unfair labour practice complaint filed under section 96 of the *Labour Relations Act, 1995*, which is incorporated into the OHSA for procedural and remedial purposes (see section 50(3) of the OHSA).

3. The issues and arguments raised in this case can be summarized quite simply.

4. Ms. Musty contends that sexual harassment and gender discrimination are workplace “hazards” that are covered by the OHSA; and that, in her case, those “hazards” were created and tolerated by certain members of Meridian’s management. Ms. Musty contends that those company supervisors were the source of the gender discrimination to which she was subjected, and that more senior members of management failed to address the situation when it was brought to their attention. Ms. Musty says that the harassment and offensive behaviour of which she complained did not abate, but was followed by more of the same. In her submission the company’s inaction in these circumstances was itself a penalty imposed upon her for complaining. Ms. Musty asserts that she was first ignored, and later penalized, for raising these concerns; and that ultimately the stress was so great that she was forced to leave the workplace.

5. Ms. Musty asserts that the management of Meridian did not take reasonable steps to safeguard her well being while she was at work, and that Meridian has still not responded adequately to guarantee a safe (i.e. harassment-free) work environment. In Ms. Musty’s submission, Meridian has

not rectified the poisoned work environment that resulted from the misconduct of certain of its managers, and until Meridian takes such steps, she cannot return to work.

6. Ms. Musty contends that Meridian's actions (and inaction) have forced her to leave the workplace, have deprived her of income and benefits, and have penalized her for pursuing a safe work environment. In Ms. Musty's submission, she has been "penalized" for exercising rights that are protected by the OHSA, and she can therefore seek relief under section 50 of the OHSA. Ms. Musty urges the Board to hear evidence about these various issues - including the extent of the harassment to which she was subjected - and grant a range of remedies that are set out in more detail below. As I understand it, she argues that the Board needs to hear about the pattern of harassment in order to determine her claim under section 50(1), and in order to fashion an appropriate remedy.

7. Meridian's response can also be summarized fairly simply.

8. Meridian concedes that Ms. Musty has been dealt with improperly by two of its supervisors, and that she was the target of harassment and gender-based discrimination. Meridian also concedes that a remedial response is required, both in respect of Ms. Musty's personal situation, and in respect of the work environment in the plant where she worked. However, Meridian raises a variety of reasons why this particular complaint cannot, or should not, be considered by the Board under the OHSA.

9. Meridian asserts that there was undue delay in filing the health and safety complaint (more than a year after Ms. Musty left work in November 1994, and even longer after the events complained of); that the complaint was and is insufficiently particularized; that the particulars that are stipulated do not make out a breach of *the OHSA* at all; and that even if there is some breach of the OHSA, the situation does not fall within the ambit of section 50. Meridian further asserts that even if problems of gender discrimination in the workplace might conceivably "fit" under the OHSA, the Board should decline to hear this case because the gender discrimination issues are more appropriately addressed by the Ontario Human Rights Commission ("the Commission"), under the *Ontario Human Rights Code* ("the Code").

10. Meridian maintains that Ms. Musty has never been penalized "because" she was seeking to exercise rights under the OHSA, nor, in Meridian's submission, did Ms. Musty ever *actually think* that the OHSA had anything to do with her situation. That characterization of events did not surface until many months after Ms. Musty had left the workplace. Counsel for Meridian asks, rhetorically: "how can the complainant *now* contend that she was exercising rights under the OHSA, or complying with the terms of the OHSA, or seeking enforcement of the OHSA, when *at the relevant time*, there was no mention of the OHSA at all and no effort by Ms. Musty to apply statutory provisions with which she was quite familiar?"

11. It is not disputed that at all material times Ms. Musty was Co-Chair of the company's Joint Health and Safety Committee. Indeed, Mr. Kopyto requested that Ms. Musty be listed as "co-counsel" in this case because, he said, she has expertise in both health and safety issues and the operation of the OHSA. Meridian says that if that is so, one would have expected her to identify an OHSA or "health and safety" concern if she had really been thinking in those terms. Counsel submits that the current complaint is an *ex post facto* rationalization, based on legal considerations that were never part of the equation while Ms. Musty was actively employed. The OHSA label did not emerge until many months after the relevant events, when Ms. Musty decided to recast her concerns as a problem under the OHSA so that she could get a hearing before this Board.

12. Meridian further points out that section 50 of the OHSA is not the vehicle for enforcing workplace health standards or eliminating workplace hazards. That is dealt with by Ministry of Labour inspectors, through enforcement mechanisms set out elsewhere in the OHSA - not by this Board under

section 50. Section 50 is confined to alleged “reprisals” for the exercise of statutory rights; and in this case Meridian asserts that there was no purported exercise of rights, and there have been “reprisals” either. On the contrary. When senior members of management became aware of the situation, they immediately moved to correct it. The fact that Ms. Musty thinks that the company’s responses (and compensation offers) are inadequate, does not make them a “reprisal” under section 50. The company says that it moved expeditiously to meet Ms. Musty’s concerns; but even if it had not done so, inaction could not be construed as a “reprisal” or “penalty”.

13. More fundamentally, though, Meridian asserts that this complaint is totally misconceived, because, sexual harassment and gender discrimination of the kind that has arisen in this case are not subjects that are regulated by the OHSA *at all* - with the result that this Board has no jurisdiction to hear the complaint.

14. In Meridian’s submission, Ms. Musty never actually believed that she was pursuing rights under the OHSA; but even if she did, the Board’s jurisdiction is not founded upon an employee’s beliefs. In Meridian’s submission, the OHSA does not deal with gender discrimination in the workplace - or, indeed, with any of the other kinds of discrimination (race, age, creed, etc.) that are delimited in the *Ontario Human Rights Code* and could cause an employee distress. Those matters are simply not “safety questions” to which the OHSA is addressed; they are dealt with under the *Ontario Human Rights Code*, to which Ms. Musty must look if she is unhappy about Meridian’s efforts to rectify the situation. Counsel concedes that there might be a set of circumstances where harassment (a human rights issue) might also involve some tangible threat to employee safety (for example: some ill-motivated prank). But that is not the situation here. In pith and substance, this is a “human rights complaint”.

15. In the alternative, Meridian asserts that even if there is a case that the OHSA might “arguably” cover gender discrimination (or other forms of behaviour covered by the *Ontario Human Rights Code*), the circumstances of this case are such that the Board should *defer* to the Ontario Human Rights Commission - which is the tribunal specifically mandated to deal with issues of this kind. In Meridian’s submission, problems of gender discrimination in the workplace are the concern of the *Ontario Human Rights Commission* under the *Ontario Human Rights Code* - not the *Ontario Labour Relations Board* (or the Ministry of Labour) under the *Occupational Health and Safety Act*. Meridian also urges the Board to take into account its settlement offers, which, the company says, adequately deal with Ms. Musty’s concerns, and already go beyond what this Board would do under section 50. And if it is thought that the settlement proposal is inadequate - again, that is a matter for the Human Rights Commission to assess.

* * *

16. It is unnecessary to set out the pleadings in detail, or to reproduce the many documents to which the parties refer in support of their versions of “the facts”. Indeed, since a number of those documents were crafted with an eye to potential litigation, this material necessarily reflects the perspectives, and “slant” of the writers - as of course do the submissions of counsel, when they elaborated on their respective “theories of the case”. Nevertheless, I think that it is useful to sketch in some of the background leading up to the present complaint, so that these various arguments can be understood in their proper context. I will then consider whether or how the complaint fits within the legal framework established under the OHSA.

17. For ease of reference, the *Ontario Human Rights Code* may sometimes be referred to simply as “the Code”, and the Ontario Human Rights Commission may be referred to simply as “the Commission”.

18. After sketching in the background, I will reiterate the parties' positions, then turn, more specifically, to the statutory provisions to which both parties refer.

Background

19. Ms. Musty was hired by Meridian in November 1992 as the co-ordinator of safety and training programs at the company's manufacturing facility in Strathroy, Ontario. Ms. Musty had overall responsibility for Health and Safety and environmental issues at the plant, and was Co-chairperson of the joint Health and Safety Committee.

20. In the ordinary course of her work, Ms. Musty was required to interact with other employees and with various members of management. Apparently, that interaction was not always easy. In a letter dated December 7, 1994, Ms. Musty's (then) solicitor describes Ms. Musty's job this way:

"This is a position which invariably leads to conflict as workers are required to adapt to changes in the workplace".

However, the solicitor then goes on to say:

"Conflict crosses the line to harassment when male employees from plant workers to superintendents put up disrespectful, dehumanizing photographs of females in no or scanty attire, read passages of such academic works as 'How to Please Your Man' and are subjected to ongoing comments about physical appearance."

21. This latter comment succinctly summarizes the sexual harassment concerns that are at the heart of this complaint.

22. Ms. Musty asserts (paragraphs 5-12 of her OHSA complaint) that while she was working for Meridian, she was subjected to a number of incidents of harassment and gender discrimination which contributed to a "poisoned work environment". The source of these problems was Paul Walker the Plant superintendent, and, to a lesser degree, Ed Waters, the Maintenance Supervisor.

23. Ms. Musty alleges that in October 1994, Paul Walker read from a male sex manual that he kept in his desk; and that in the spring and summer of 1994, Mr. Walker made offensive remarks and gestures about the breasts and buttocks of other female workers (i.e. not Ms. Musty herself). Ms. Musty alleges Mr. Walker had a coffee cup with an offensive female image on it, that he kept in his office and sometimes brought to production meetings; and that Mr. Walker also had a plastic replica of a female breast on the bulletin board in his office. Ms. Musty further asserts that in June 1993, in the course of a fire drill, Ed Waters, the Maintenance Supervisor, referred to her as a "mop head", and expressed the view (punctuated by profanity) that the company should never have hired a woman to occupy her position. Ms. Musty complains that, because she was a woman, she was never regarded as a full member of the "team", and that members of management made things difficult for her.

24. Ms. Musty says that she addressed senior members of management about this behaviour, but nothing was ever done about it; and on November 1, 1994, she was finally forced to withdraw from the workplace, and seek medical treatment for the resulting stress. She has not yet returned to work, and characterizes the situation as one of "constructive dismissal"; moreover, since at least August 1995, she has been without any wages or benefits from Meridian. Nor (to date) has she received any compensation for the improper behaviour to which she was subjected.

25. There is a dispute about when senior members of management actually knew about Ms. Musty's allegations, and, in particular, when they were aware (or should have been aware) that the inter-personal friction said to be inherent in her job, had become infused with gender bias and sexual

harassment. But there is no dispute that that is what happened. The company concedes that, in a number of instances, the behaviour of its two managers was improper. At paragraph 2 of its reply, the respondent Meridian states:

The Respondent acknowledges the allegation in paragraph 5 of Schedule A to the Complaint that during the course of Ms. Musty's employment, she has been exposed to working conditions which amounted to sexual harassment, and which were related to a poisoned work environment and discrimination based on gender.

26. Following Ms. Musty's departure from work in November 1994, she filed a claim under the *Workers' Compensation Act*, asserting that she was disabled and unable to work because of the results of sexual harassment in the workplace. The Workers' Compensation Board ("WCB") denied that claim in a written response dated November 23, 1994. A copy of the WCB response was sent to Meridian, and would have reached the company in late November or early December 1994.

27. According to Meridian, the letter from the WCB was the first time that senior management became aware that the interpersonal conflict and "harassment" of which Ms. Musty complained, had a specific *gender basis*. Meridian says that, before that, the company knew that Ms. Musty was having difficulties with her co-workers, and that she felt harassed, pressured and under-appreciated. The company also knew that she had complained of stress. But Meridian says that until it received the letter from the WCB, it did not appreciate that Ms. Musty was making allegations of specific *misconduct* (i.e. gender discrimination and sexual harassment).

28. In early December 1994, Meridian also received correspondence from Anne Marie Frauts, a lawyer whom Ms. Musty had retained to act on her behalf. In a letter dated December 7, 1994, Ms. Frauts advised that she had been retained by Ms. Musty in respect of sexual harassment in the workplace, that she had advised Ms. Musty to file a complaint with the Ontario Human Rights Commission "whose mandate it is to redress this harassment at both the personal and public level", and that she had been instructed by Ms. Musty to enter into negotiations for an appropriate severance package based on Ms. Musty's "constructive dismissal" from her employment.

29. I might note at this point, that neither in this letter from Ms. Musty's counsel in December 1994, nor throughout most of 1995 (i.e. well after the complainant had left the workplace and consulted counsel), did anyone describe the situation as a "health and safety" issue, or assert rights under the *Occupational Health and Safety Act*. It was referred to as a "human rights" problem and a "constructive dismissal", that warranted an appropriate severance pay package. Thus, although Ms. Musty *now* characterizes her departure from work in November 1994 as a "work refusal" within the meaning of section 43 of the OHSA, it appears that no one considered it that way at the time, nor did Ms. Musty identify it as such, or trigger the intervention of the plant Health and Safety Committee or a Ministry of Labour inspector. And neither did the company.

30. In any event, following the letters from the WCB and from Ms. Frauts, Meridian retained Barbara Humphrey, a lawyer with experience in workplace harassment issues. Ms. Humphrey was instructed to conduct an investigation of Ms. Musty's allegations and make recommendations based upon her findings. Ms. Musty and her counsel (Ms. Frauts) were invited to participate in that process, and in a letter to Ms. Frauts dated December 12, 1994, Ms. Humphrey set out her understanding of Ms. Musty's allegations. Ms. Humphrey then went on to say (in part):

"To facilitate the investigation that I will [be] conducting, I would request more specific information regarding your client's specific concerns (i.e. specifics of what allegedly occurred, when, by whom, whether it was witnessed by anyone, etc.). We would request that you assist your client in setting in writing the details of her concerns and allegations. This will assist us in insuring a thorough investigation into any and all concerns. To assist you with this task, we have attached for you a

guideline of the types of information and specifics that are useful for a complainant to address in such written form.

Your client's written report of her concerns or allegations will be used in planning and carrying out the investigation. Once we have the concerns in writing, we would then propose to arrange an interview of your client through yourself. You may want to be present at such interview. We can proceed to make appropriate arrangements for this interview as soon as you have faxed to our attention the detailed statement discussed above."

Ms. Humphrey indicated that the company's internal investigation would proceed whether or not Ms. Musty filed a complaint with the Ontario Human Rights Commission.

31. It does not seem to be disputed that, over the course of several days, Ms. Humphrey conducted interviews with quite a number of employees in the workplace - including the complainant, the supervisors against whom the allegations were made, and a number of other workers. The allegations investigated by Ms. Humphrey were broadly similar to those raised in the instant complaint (and in a parallel human rights complaint filed later): offensive discussions about sexual matters (the male medical manual issue); negative references to an employee's body type (not the complainant's); the presence of offensive objects or images (the plastic breasts on the bulletin board and the coffee cup with a woman's image on it); and certain other comments said to be embarrassing and offensive. In addition, the investigator pursued certain other allegations which were not part of Ms. Musty's original OHSa complaint, but which her present representative, Mr. Kopyto, has indicated she also relies on: that in the course of some training and fire drill exercises, managers responded negatively to Ms. Musty, at least in part, because Ms. Musty is a woman.

32. Ms. Humphrey's investigation resulted in a report dated January 13, 1995. At page 31, Ms. Humphrey summarized her findings this way:

1. The investigator finds that the work environment in existence at the time and prior to this investigation at Magnesium Products Limited represented a gender-based poison work environment.
2. The investigator finds that the fact of the complainant's gender was an operative factor in the tone and character of the response of both Mr. Walker and Mr. Waters to the complainant's performance problems which clearly existed.

In other words, the investigation initiated by the company (and conducted by Ms. Humphrey) concluded that Ms. Musty's complaints were *justified*.

33. Ms. Humphrey then went on to canvass how the offending supervisors should be dealt with, how Ms. Musty's personal situation should be addressed, and what to do about the "poisoned work environment" in which Ms. Musty and other female employees were working. Among other things, Ms. Humphrey suggested: training, counselling and formal discipline for the supervisors, in order to make it clear to them that their behaviour was unacceptable and, if repeated, would lead to discharge; development of a strong workplace harassment policy; training on harassment issues for all employees in the workplace; the establishment of a formal internal complaint process to address these issues as they arose; clarification of Ms. Musty's responsibilities; and changing Ms. Musty's reporting relationship so that she would no longer have to deal with Mr. Walker and would report instead to someone above him in the managerial hierarchy.

34. These remedial responses were formulated without (at that stage) specific input from Ms. Musty or her counsel, because Ms. Musty and her counsel had indicated that they preferred to respond after the report was released. By letter dated February 8, 1995, Ms. Humphrey observed:

"It is unfortunate that your client was not prepared to meet to discuss the findings of my investigation and particularly her interest in any remedial action. As you will see from pages 39 and 40 of the Investigation Report, I believe that her input would be useful with respect to any remedial action personal to Ms. Musty. I also wanted to have the opportunity to discuss in greater detail with yourself and Ms. Musty, the results of my investigation, given my recommendation regarding the extent of disclosure of the Report which has been accepted by the Company."

Nevertheless, Ms. Humphrey confirmed once again that Ms. Musty's complaint was justified: "as a result of [the candour of the persons interviewed] Ms. Musty's allegations of both the existence of a poisoned work environment and of gender being a factor in her dealings with certain members of management were all found to be validated by the investigator". She then wrote:

"You will see from the *Remedial Recommendations* that I have recommended significant measures to redress the problematic environment which is of interest to all employees (i.e. implementation of an effective policy, universal education, internal complaints procedure). I can advise that these have all been accepted and are being acted on at this time. The company is currently planning both for the implementation of an effective policy and the various educational initiatives required to support the implementation policy. With respect to my recommendations that pertain directly to any individual responsible for the problematic work environment, these have also been accepted and are being pursued by the company. ... I have also identified the existence of a personal interest of Patricia Musty in the environment to be addressed to enable her to function effectively in her role when she returns to the workplace. It is in this area that I was hoping to have further discussion with yourself and Ms. Musty and look forward to your input ...".

35. There followed an exchange of correspondence over several months concerning: whether Ms. Musty was or was not *able* to return to work within the foreseeable future, given the psychological trauma which, she said, had been caused by the workplace environment; whether or not Ms. Musty was *willing* to return to work; whether the remedial initiatives of the company were adequate for either purpose; what additional conditions could or should attend Ms. Musty's return to work; and what compensation Ms. Musty might be entitled to for past losses, and over the additional year off work which, she said, would be necessary for her to recover from the stress that she had experienced. In the meantime, of course, Ms. Musty was off work, and as the months passed, was under increasing financial pressure.

36. When Ms. Musty left work in November 1994, Meridian completed a WCB Form 7 indicating (based on information received from her) that she was experiencing "work-related stress due to harassment". This was the foundation for Ms. Musty's WCB claim to which I have already referred, and produced the letter from the WCB which set in train the company's internal investigation. However, apart altogether from Ms. Musty's WCB claim, her departure from the work in November 1994, triggered the company's own "in-house" salary continuation policy. That policy provides income protection for salaried employees in proportion to their length of service at the time of disability, and can be used to "bridge" a claim for long term disability assistance that is available under an insurance policy which the company has with Great-West Life.

37. It does not seem to be disputed that, for a number of months after she left the workplace in November 1994, Ms. Musty received the benefits stipulated in the company's in-house income protection policy. Nor does it appear to be disputed that those benefits were extended by the company beyond their normal terminal date, while Ms. Musty was pursuing a claim for long-term disability under the company's insurance plan. In this regard, at least, it appears that throughout most of 1995 Ms. Musty was being treated like any other employee - despite the assertion by her lawyer in December 1994, that she had been "constructively dismissed".

38. Ms. Musty received payments under the company's income maintenance plan until mid-August 1995, when, it appears, Great-West Life denied her claim for long term disability payments,

because, the insurance company said, there was insufficient medical evidence to support it. But when Great-West Life denied Ms. Musty's claim for long term disability, the company stopped paying benefits under its in-house plan.

39. There is a dispute about why Meridian stopped the complainant's salary payments after mid-August 1995.

40. Meridian takes the position that by August 1995 Ms. Musty had been away from work for more than nine months, that the company had never severed her employment, that the situation in the work place had been rectified by then, and that it expected Ms. Musty to return to work if she was able to do so. Meridian says that neither in August 1995 nor at any time thereafter, has it received any medical evidence establishing that Ms. Musty has a continuing disability which prevents her from working. Meridian says that it had no reason to question Ms. Musty earlier, but by the same token, it had no reason to doubt the assessment of its insurance carrier either; so that if there is a medical basis for Ms. Musty's reluctance to return to work, she should provide medical evidence of her current situation. Meridian asserts that if Ms. Musty is totally disabled because of something that happened to her at work, there should be medical evidence to support that claim. Meridian further asserts that in June of 1995 Ms. Musty made some comments that suggested to the company that her inability to return to work had more to do with a lack of child care arrangements than her medical condition.

41. Ms. Musty replies that the situation of workplace harassment has not been rectified, that the company's efforts to do so have been inadequate, and that she would continue to face a poisoned work environment if she were to return to work. In Ms. Musty's submission, the company's offer to return to work and its offer of compensation are insufficient and duplicitous; moreover, the termination of benefits in August 1995 was really part of an ongoing scheme to penalized her for raising her complaint in the first place. Ms. Musty disputes the company's characterization of her comments in June 1995, and asserts that the conversation was part of a pattern of continuing harassment and pressure designed to discourage her return to work.

42. Since the meeting of June 1995 forms the basis for an independent allegation of misconduct (i.e. one that is said to have occurred long after Ms. Musty's departure from the workplace in November 1994), it may be useful to briefly describe what that dispute is about.

43. In June of 1995 the complainant met with Bob Lander, who had become the President of Meridian some months before. The ostensible purpose of that meeting was to consider what steps were necessary to facilitate Ms. Musty's return to work, because, at that point, she had been out of the plant for about seven months (see the complaint at paragraph 15 and the response at paragraph 26). However, what actually happened in the June meeting is hotly disputed.

44. Ms. Musty says that Mr. Lander was not prepared to take the steps necessary to address her concerns, that he made comments suggesting she should *not* return to work, and that he initiated discussions about severing her employment with an accompanying severance package. Ms. Musty says that these comments constitute a reprisal or threat of reprisal, that she was being pressured not to return to work, and, that Mr. Lander's comments and the subsequent (August) discontinuation of her benefits, amount to further harassment and recrimination for making her initial complainants. As Ms. Musty sees it, the entire scenario was intended to discourage her from returning to work. In her submission, she has been pressured and penalized by the company, in various ways, since she first started complaining about gender discrimination and harassment many months before.

45. Meridian asserts that the meeting with Mr. Lander took approximately two hours and never departed from its intended purpose: to review the steps that the company had taken to address Ms. Musty's concerns, with a view to facilitating her return to the workplace. Meridian's position is that

despite Mr. Lander's efforts to reassure the complainant that there had been positive changes to the operation and that she would be welcomed back, the complainant repeatedly indicated her discomfort about returning. It was only then - and after Ms. Musty had raised it - that the company indicated that, as an alternative, it would be prepared to offer an appropriate severance package if Ms. Musty preferred not to return to the workplace.

46. Accordingly, there is a dispute about both the company's motives and the contents of the conversation on June 2, 1995.

47. In July 1995, Ms. Musty filed a complaint with the Ontario Human Rights Commission alleging a breach of the *Ontario Human Rights Code*. The complaint refers to sexual harassment and poisoned work environment - essentially the same allegations that formed the basis of the instant OHSA complaint that was filed four months later. An investigator has been appointed by the Ontario Human Rights Commission to look into the complaint, and has communicated with the parties on several occasions with a view to facilitating a settlement.

48. In other words, the allegations and the underlying circumstances that are central to *this complaint* to the *Labour Relations Board* under the *OHSA* (i.e. sexual harassment, gender discrimination, poisoned work environment, alleged reprisals) are also central to a virtually *identical complaint*, under the *Ontario Human Rights Code*, before the *Ontario Human Rights Commission*. In both cases, Ms. Musty complains about her work environment and what she alleges are reprisals. And, since gender bias (and thus a breach of the *Code*) is essentially admitted in both forums, the adequacy of the company's response is central to the disposition of the human rights complaint as well.

49. In the result, as things now stand, both statutory tribunals are being asked to consider the situation that Ms. Musty faced at the Meridian plant in 1993 and 1994, and both tribunals are being asked to develop an appropriate remedy.

50. Meridian has provided the Human Rights Commission with the findings and recommendations made by Ms. Humphrey, together with a summary of the remedial initiatives that it says it has implemented to date. Meridian has invited the Commission's input into achieving a final resolution of the matter - both in respect of Ms. Musty herself, and in respect of the situation in the workplace. Meridian says that it has acted responsibly once the problem was identified.

51. In a letter dated October 11, 1995 the representative of the Human Rights Commission has suggested that settlement discussions should be carried out through the offices of the Commission. At this stage, the Commission has not yet decided whether it is appropriate to refer the matter to a board of inquiry. Nor is it clear what the Commission thinks about Meridian's efforts to rectify the situation (i.e. whether Meridian's proposals are adequate or deficient from a *Human Rights Code* perspective).

52. On November 16, 1995, the complainant launched a civil action against the company in Ontario Court (General Division). The civil action alleges wrongful dismissal "because of her sex, a ground prohibited by the Ontario Human Rights Code". The civil action also alleges the intentional infliction of emotional distress and/or negligence in permitting or failing to rectify her workplace environment.

53. In the civil action, Ms. Musty asks the Court to award general and special damages totalling \$900,000, costs and interest, because of "loss of income, emotional distress, anxiety, insult, stress ... loss of self-esteem, degradation, unhappiness, and ... out of pocket expenses". Ms. Musty alleges that the company's behaviour rendered her "incapable of enjoying the amenities of life during the period of her illness or to obtain alternative employment". The statement of claim filed with the Court asserts, at paragraph 11:

11. Notwithstanding the Defendant's admission of liability and its undertaking to prevent a recurrence of the impugned conduct and to eradicate the poisoned work environment identified as the cause of the stress and anxiety experienced by the Plaintiff which resulted in her constructive dismissal, the Defendant has failed to take reasonable measures necessary to eliminate the workplace harassment and gender discrimination. In particular, the Defendant has failed to undertake to form a committee with authority to investigate and adjudicate on similar complaints to hers including creating reporting levels and the power to promulgate a disciplinary code for future infractions which would include termination. While the Defendant has taken some cosmetic measures in order to give the appearance of rectifying the conditions and conduct complained of, it has failed to take effective disciplinary proceedings against the persons responsible for the conduct complained of. In addition it has concurred in the termination of the Plaintiff's entitlement to short-term disability benefits, has exerted unreasonable pressure on the Plaintiff to return to her employment notwithstanding her condition and the likelihood that she would be returned to substantially the same conditions which caused her illness and the termination of her employment in the first instance and has attempted to obtain her formal resignation from her employment.

54. As will be seen, the situation in the workplace and the adequacy of Meridian's response - the issues before this Board and before the Human Rights Commission - are central to Ms. Musty's civil action as well. And although the civil action is framed in terms of common law rights in tort and contract, it also references a statutory linkage - behaviour contrary to the *Human Rights Code* (but not the OHSA).

55. I do not know the status of Ms. Musty's worker compensation claim which, as I have already noted, was initially denied by the WCB in November 1994. All that can be said is that there may be a credible basis for that claim based upon the established jurisprudence of the Workers' Compensation Appeal Tribunal (see for example the WCAT decision in *Ontario v. Dogherty and Fitzgibbon*, 142/94 released April 10, 1995). However, I do not know whether the complainant has appealed the WCB decision, or how long such appeal would take to process or litigate. It suffices to say that, as of August 1995, the complainant was not receiving income or benefits from Meridian's in-house plan, from Great-West Life, or from the WCB.

56. On November 20, 1995, the complainant filed her OHSA complaint to this Board. In that OHSA complaint, Ms. Musty seeks the following remedies:

- (a) reinstatement in her employment with full benefits with the Respondent subject to the conditions outlined in the Applicant's letter to the Respondent dated April 13, 1995 and *in particular, subject to the formation of a committee with authority to investigate and adjudicate on similar complaints to that of the Applicant including a committee which would create reporting levels and which would be able to exercise the power to set forth a disciplinary code for similar future infractions of the Health and Safety Act up to and including termination, and incorporating the principles of progressive discipline. Alternately, the Applicant asked that this Board declare that the existing Joint Health and Safety Committee has such authority and power to exercise such jurisdiction described in the sentences above;*
- (b) an Order for damages for income and other pecuniary losses incurred as a result of her unlawful constructive dismissal;
- (c) an Order for damages for mental anguish, prejudice to her future employment opportunities and other non-pecuniary losses caused by the gender discrimination to which the Applicant was subjected and also caused by her constructive dismissal;
- (d) an Order for interest on the amounts requested pursuant to subclauses (b) and (c) above;
- (e) such further and other relief as counsel for the Applicant may advise and this Board may deem appropriate to grant.

[emphasis added]

57. In the course of argument, Mr. Kopyto, the complainant's current representative, elaborated upon these remedies. He asserted that a continuing monitoring body with real power is necessary to counteract entrenched attitudes, to clear the air, and to ensure that further harassment problems will not arise or can be effectively addressed. It is essential to have a remedy of that kind in place before Ms. Musty returns to work.

58. It is unclear whether the complainant continues to seek all of the other remedies pursued by her former counsel in her letter of April 1995 (mentioned above); however, for present purposes, I will assume that these remedies have not been abandoned. Accordingly, in this OHSa complaint, Ms. Musty is seeking a number of other orders as well - for example: the insertion of a "just cause clause" into a 3-year contract of employment with automatic raises, an additional year off work, and demotion for Mr. Walker and Mr. Waters.

59. Meridian does not admit that there has been a breach of the *Occupational Health and Safety Act*, or even that this particular complaint can be dealt with under the *Occupational Health and Safety Act*. However, the company *does* admit that there has been sexual harassment and gender discrimination in the workplace, and *does* admit that the poisoned work environment has to be rectified.

60. The company's position is that it already has, or is prepared to, implement all of the recommendations in the investigator's report, and, further, that it will consider anything else that the Ontario Human Rights Commission might recommend. Meridian says that it has already given a letter of assurance to the Ontario Human Rights Commission, confirming the measures that the company has taken to remedy the situation. These include:

- the implementation of an effective workplace harassment policy;
- the provision of a relevant education to the workplace on workplace harassment;
- the establishment of a formal internal complaint process to receive and address issues of a human rights nature;
- removing visual or other material focusing attention on gender from the workplace;
- a procedure for auditing the workplace to ensure that such material did not reappear;
- education and training of the perpetrators to equip them to understand and discharge their responsibilities respecting human rights obligations, together with discipline and warnings that further misbehaviour may result in discharge;
- steps to clearly define Ms. Musty's responsibilities and authority;
- removing the necessity for Ms. Musty to have any direct dealings with Mr. Walker, who was the source of much of her complaint;
- establishing a reporting or accountability relationship between Ms. Musty and a member of management at a level *above* Mr. Walker;
- taking steps to ensure that the individual to whom Ms. Musty reported would address any relevant issues in a constructive and proper manner.

61. With regard to some of the particular requests made by Ms. Musty (or her former counsel), the company is prepared to:

- tender a letter of apology to the complainant;
- change the reporting relationship so that she reports directly to the company's directors;
- post human rights materials in the workplace;
- confirm that the investigation was not directed at either investigating or making any determinations with respect to issues of her work performance;
- place Ms. Musty's terms of employment in a written contract or letter;
- provide an outline of management training on workplace harassment issues to the complainant.

62. With respect to compensation, the company has advised the Board that it is prepared to make the complainant whole for any wage/benefit losses between November 1994 when she left work and August 1995 - which is the point at which the company suggests Ms. Musty should either have been able to return to work, or should have produced some medical verification of her continuing illness or disability. The company says that this compensation offer covers the 9 to 10-month period up to August when Ms. Musty was away from work, and receiving payments under the company's in-house income maintenance policy. In effect, it puts her in the same financial position as she would have been in, if she had been at work during this period.

63. The company is also prepared to pay the complainant a further lump sum of \$10,000 representing damages for "mental anguish". The company points out that this is the maximum amount recoverable for "mental distress" under the *Ontario Human Rights Code*; and that this Board (unlike the Courts and perhaps the Workers' Compensation Appeal Tribunal) does not normally get into issues of "mental distress" under section 96 of the *Labour Relations Act* (which is imported into OHSA by virtue of section 50(3) of the OHSA, and is the foundation for the Board's remedial authority).

64. In the company's submission, this resolution reasonably addresses the complainant's concerns and losses - as a practical matter, making it unnecessary to engage in litigation, to address the OHSA arguments and issues mentioned above, or to consider whether *this Board under the OHSA* could, or should, grant the range of remedies that Ms. Musty seeks. The company says that if more needs to be done to "cure" the poisoned work environment, it will work with the Human Rights Commission to accomplish that objective. The company says that a sensible settlement offer is something the Board should take into account before embarking upon protracted but problematic litigation under the OHSA.

65. Of course, there is an argument about whether these remedies have been appropriately implemented or not, and whether they are adequate or not, which may be difficult to assess without hearing evidence about the context and Meridian's response. Without knowing the details of how the poisoned work environment was created or how Ms. Musty was treated, it may be hard to determine either the OHSA issues or the appropriateness of any remedy. For, of course, Ms. Musty asserts that the remedies mentioned by the company are insufficient and have not been undertaken in good faith, and she says that that would become apparent after the Board hears evidence about what happened to her in the workplace - both generally, and in respect to the disputed issues mentioned above. In Ms. Musty's

submission, the remedies proposed by Meridian have been cleverly calculated to conceal the company's true motive - which is to penalize her for raising these issues in the first place, and discourage her from returning to work.

66. In summary, then, as things now stand, there may be as many as four separate legal proceedings in which the complainant seeks remedies because of what happened to her at work:

1. A worker compensation claim.
2. A complaint to the Ontario Human Rights Commission brought under the *Ontario Human Rights Code*.
3. A civil action in the Courts, (which, I am told, will not be proceeding pending the Board's ruling in this case), and
4. The instant complaint before the Ontario Labour Relations Board, brought under the *Occupational Health and Safety Act*.

67. In each proceeding, the essential facts are the same, and at the very least, the remedies overlap. However, the legal framework and forums are quite different, and the onus and parties may not be the same. So, at this stage, it is difficult to say whether the remedies are completely congruent. Nor is it easy to predict whether doctrines such as *res judicata* or *issue estoppel* might apply to prevent these different proceedings from going on at the same time, or to prevent the various adjudicators dealing with the matter from making conflicting findings of fact, credibility, or law. What can be said is that the Courts and three statutory tribunals may all be asked to review an *admitted* case of workplace discrimination, in order to determine what remedies might be available, and whether the remedies already advanced by Meridian are appropriate.

68. In Meridian's submission, this spectre of overlapping litigation (involving different *statutory* regimes and different *statutory* tribunals) reinforces what might be described as its "institutional argument": that the OHSA and the *Ontario Human Rights Code* must be read together to create a single, coherent, regulatory scheme. Meridian argues that when one does read the two statutes together in this way, it becomes apparent that remedying this kind of gender discrimination in the workplace is the work of the Ontario Human Rights Commission under the *Ontario Human Rights Code* - not the Ontario Labour Relations Board or the Ministry of Labour under the *Occupational Health and Safety Act*. In Meridian's submission, the OHSA simply does not address gender discrimination of the kind that has surfaced in this case. But, even if there is an "arguable case" that such issues *might* be a "hazard" that falls under the OHSA umbrella, this Board should nevertheless defer to the statute and to the tribunal which expressly deals with these matters.

69. In summary, Meridian argues that this Board has no *jurisdiction* under the OHSA to enquire into this particular complaint, but that even if the Board does have *jurisdiction* to hear the matter, it should exercise its *discretion* not to do so.

70. The complainant replies that the provisions of the OHSA are broad enough to encompass workplace sexual harassment, which can be regarded and dealt with just like any other workplace "hazard"; moreover, there is at least an "arguable case" that this is so, and thus an "arguable case" that the complaint can fit within the ambit of section 50 of the OHSA. Ms. Musty argues that the protections in section 50 of the OHSA are linked to the exercise of employee rights and performance of employer obligations under sections 26, 27, 28 and 43 of the OHSA. In Ms. Musty's submission, the company did not take reasonable steps to either avoid the situation in its plant or to alleviate the problem when it was brought the company's attention. In fact, the failure to act is, in itself, a form of reprisal under

section 50 - quite apart from the specific reprisals outlined by the complainant. Ms. Musty says the that initial harassment and the company's subsequent response to her are interrelated, and amount to a reprisal for pursuing a harassment-free environment.

71. Ms. Musty asserts that there is no reason to defer to the Ontario Human Rights Commission, because this Board has adequate authority and remedial powers under the OHSA. She asserts that, as a practical matter, the Commission is not likely to address the issues expeditiously. The complainant points out that proceedings before the Commission are frequently plagued by prejudicial delay, and argues that if the OHSA provides an alternative avenue to seek redress, the Board should step in. The fact that there may be alternative forums should not deter the Board from exercising its independent jurisdiction under the OHSA.

* * *

72. These "jurisdictional" and "deferral" arguments are based upon the way in which the two statutes regulate behaviour in the workplace and the way in which the Commission and the Board are involved in such regulation. It may be useful, therefore, to take a brief look at how those two statutes are framed. Because, of course, if the complainant is right, both statutes apply, and both regulatory mechanisms can be engaged at the same time (or in the alternative). And if Meridian is right, this particular complaint must or should be dealt with under the *Human Rights Code* - not the OHSA.

The OHSA and the Human Rights Code - An Overview

73. The *Human Rights Code* creates a framework of rights and freedoms of wide-ranging application and quasi-constitutional status (see *Institutional Corporation of British Columbia v. Heerspink*, [1982] 2 S.C.R. 145; *Zurich Insurance Co. v. Ontario Human Rights Commission*, [1992] 2 S.C.R. 145; *Zurich Insurance Co. v. Ontario Human Rights Commission*, [1992] 2 S.C.R. 321; and *Dickason v. University of Alberta*, [1992] 2 S.C.R. 1103). Its primary thrust is the elimination of discrimination on a number of stipulated grounds (race, creed, colour, ethnic origin, age, sex, marital status, etc.). However, it is important to note that *the Code is also an employment statute*, regulating various aspects of the employer-employee relationship - just like the *Labour Relations Act*, the *Occupational Health and Safety Act*, the *Employment Standards Act*, the *Workers' Compensation Act*, etc. The Code is part of the fabric of employment law, and among its elements, are several provisions prohibiting gender discrimination and harassment in the workplace. Sections 5 and 7 of the Code read, in part, as follows:

5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or handicap.

• • •

7. (2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

(3) Every person has a right to be free from,

- (a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- (b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

74. Sections 8 and 9 of the Code prohibit the infringement of these enumerated rights, *as well as any "reprisals"* because someone has sought to enforce them:

8. *Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.*

9. *No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.*

75. The Code protects an individual from harassment and discrimination in employment on any of the prohibited grounds. The Code also protects an individual from reprisals for "claiming" or seeking to enforce the rights that are spelled out in the Code. "Harassment" and "gender discrimination" receive specific, but separate legislative treatment. So does the question of "reprisals". And to complete the picture, section 11 of the Code addresses what might be described as "constructive" discrimination - features of the work relationship which are not *intended* to discriminate, but which nevertheless have an exclusionary or discriminatory impact.

76. The "sexual harassment" provision [now section 7 of the Code] was added to the Code in 1981 - presumably because there was some question about the ambit of the existing gender discrimination provisions, or because it was thought that sexual harassment required separate legislative consideration, or both. But in any event, there is really no doubt that gender discrimination, sexual harassment, and reprisals are all dealt with quite explicitly (albeit separately) in the *Ontario Human Rights Code*. Accordingly, whether or not Ms. Musty has a claim under the OHSA, it is clear that she can complain under the Code about gender discrimination and harassment, and she can complain as well, if she has been the victim of reprisals for asserting rights protected by the Code. The substantive violation and the reprisal each provide an independent ground for complaint.

* * *

77. The *Occupational Health and Safety Act* has no similar provisions dealing with harassment or discrimination. If sexual harassment and gender discrimination are covered by the OHSA at all, it is because of general language involving workplace hazards, rather than specific provisions dealing with those issues. Nor is there anything in the OHSA that deals specifically with workplace stress, threats to mental health, mental disability or mental distress - all of which are part and parcel of Ms. Musty's complaint.

*

78. As its title indicates, the purpose of the *Occupational Health and Safety Act* is to promote the health and safety of workers. It does that by prescribing safety standards (often by regulation), and by establishing mechanisms to identify and rectify situations that may be a source of danger.

79. The legislative antecedents of the OHSA have been canvassed in *Inco Metals Co.*, [1980] OLRB Rep. July 981, and will not be repeated here. It suffices to say that the OHSA creates new rights, and imposes important responsibilities, on everyone in the workplace. The Act creates what might be described as a system of "internal responsibility", that is supplemented by prescribed standards, by external inspection, by direct enforcement of statutory requirements, by quasi-criminal sanctions and by legislated protection from reprisal for seeking to enforce statutory rights. It envisages a regulatory role for the Ministry of Labour, and, to a lesser degree, the Ontario Labour Relations Board.

80. Workplaces of any size are required to have a Joint Employer/Employee Health and Safety Committee, which, (among other things) has the power to "identify situations that may be a source of

danger or hazard to workers” [section 9(18)]. The Health and Safety Committee also has the power to obtain information from the employer respecting “the identification of potential or existing hazards of materials, processes or equipment”. The range of its activities is set out in the OHSA, and need not be repeated here.

81. The Health and Safety Committee is largely a consultative and problem solving body, which has the power to conduct investigations and make recommendations for change. It does not *adjudicate* alleged breaches of the Act - although, in particular circumstances, designated workers have the power to initiate a work stoppage when employees are in danger [see sections 45-48 of the OHSA], and members of the Committee are involved in monitoring compliance with statutory norms. Accordingly, if this Board purported to give the Health and Safety Committee the power to adjudicate harassment issues and punish the perpetrators (one of Ms. Musty’s requested remedies), the Board would be conferring powers on the Committee which do not appear to be contemplated by the OHSA provisions dealing with such committees.

82. In an industrial workplace, the OHSA sets up a matrix of reciprocal rights and duties, for employers, for supervisors, and for employees. It recognizes that health and safety is everyone’s responsibility. Moreover, this is not just a matter of adhering to specific regulations. Rather, in recognition of the diverse settings to which the OHSA might apply, the Act is cast in broad language, stipulating the safety responsibilities of employers, employees and supervisors in a general way. Specific regulations are supplemented by more general obligations to work safely and take steps to minimize or eliminate risks.

83. Under section 25(1)(a) of the OHSA an employer must ensure that “the equipment, materials and protective devices, *as prescribed*” are provided to employees and used properly. This formulation incorporates items specifically addressed in the statute or regulations. But under sections 25(2)(a) and 25(2)(h), an employer must also “provide information instruction and supervision to a worker to protect the health and safety of the worker”, and must “take every precaution reasonable in the circumstances for the protection of a worker”. An employer’s specific duties in respect of prescribed items (e.g. toxic substances) are supplemented by other obligations, framed quite generally, but all designed to eliminate hazards and promote a safe work environment.

84. There are parallel provisions for “supervisors”, which are also framed in both general and specific terms.

85. Under section 27(1) of the OHSA, a supervisor must ensure that a worker “works in a manner and with the protective devices *prescribed by the Act*”, and uses or wears the appropriate equipment, protective devices or clothing. However, under sections 27(2)(a) and 27(2)(c), a supervisor has additional responsibilities:

- 27. (2) Without limiting the duty imposed by subsection (1), a supervisor shall,
 - (a) advise a worker of the existence of any *potential or actual danger* to the health or safety of the worker of which the supervisor is aware;
 - • •
 - (c) *take every precaution reasonable in the circumstances for the protection of a worker.*

86. There are obligations imposed upon employees too. Under section 28(1) a worker must (among other things):

- (a) work in compliance with the provisions of this Act and the regulations;

• • •

- (c) report to his or her employer or supervisor the absence of or defect in any equipment or protective device of which the worker is aware and which may endanger himself, herself or another worker; and
- (d) report to his or her employer or supervisor any contravention of this Act, or the regulations or the existence of any hazard of which he or she knows.

However, under section 28(2), a worker must not:

• • •

- (b) use or operate any equipment, machine, device or thing or *work in a manner that may endanger himself, herself or any other worker*; or
- (c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct.

[emphasis added]

87. These generalized obligations are open-ended. Their content depends upon the particular work setting, and what is “reasonable” in the circumstances to protect the worker from danger.

88. If an employee encounters an unsafe work situation, s/he may can refuse to work until the situation is addressed. Section 43(3) of the Act reads this way:

43. (3) A worker may refuse to work or do particular work where he or she has reason to believe that,

- (a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;
- (b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself; or
- (c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker.

Section 43 then goes on to prescribe a process for investigating the worker’s concerns - which includes a review by the in-house Health and Safety representatives, and, if necessary, a review by an inspector called in from the Ministry of Labour. (Many of the cases that come before this Board under section 50 of the OHSA, originate as work refusals under section 43.)

89. The Joint Health and Safety Committees are a permanent local forum for discussing and resolving health and safety issues. In this sense, the activities of the Health and Safety Committees augment the specific regulations made under the OHSA, and the orders of the Ministry of Labour Inspectors who may visit the plant from time to time, or may be called in to review the situation, and determine compliance with the Act. The Committee is supposed to monitor the local situation, so as to reduce the need for direct Ministry intervention.

90. The role of the Ministry of Labour inspector is rather different from that of this Board under section 50 - or (as we shall see in a moment) from that of the Human Rights Commission or a board of inquiry under the *Human Rights Code*. However, if Ms. Musty is right in her submissions, the inspector -

like this Board - is available *instead of*, or *in addition to*, any investigation or enforcement mechanisms prescribed in the *Human Rights Code*.

91. With this in mind, it is worth a brief look at how the two statutes are administered by various agencies of government.

92. The administration of the Code is given over to the Ontario Human Rights Commission, whose functions are spelled out in section 29:

29. It is the function of the Commission,

- (a) to forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law;
- (b) to promote an understanding and acceptance of and compliance with this Act;
- • •
- (f) to inquire into incidents of and conditions leading or tending to lead to tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict;
- (g) to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and co-ordinate plans, programs and activities to reduce or prevent such problems;
- (h) to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination;
- (i) to enforce this Act and orders of the board of inquiry;

As will be seen, the Commission's role under the Code is much broader than merely enforcing the Code or rectifying alleged violations. It has a more panoramic mandate, that includes investigations and programs to eliminate the sources of discrimination.

93. The Code envisages that the Commission will take a more holistic view - which does not exclude litigation of specific complaints, but may not be limited to that approach either, and could, for example, include mediation, education, and training initiatives. The Commission has a public responsibility to protect and promote the rights enumerated in the Code. And unlike this Board under the OHSA, the Code begins with a broad statement of statutory purpose, which helps shape the interpretation of that statute, as well as the role of the Commission.

94. However, the Code also includes a mechanism for enforcement through litigation of specific complaints, and provides for quasi-criminal penalties as well.

95. Where someone believes that a right under the Code has been infringed, s/he may file a complaint with the Commission (which may also initiate a complaint on its own motion, or upon the request of any person). Upon receipt of that complaint, the Commission is obliged to investigate and endeavour to effect a settlement. The Commission has wide powers of investigation, and the obstruction of such investigation is itself an offence under the Code. The Commission carries the complaint on the complainant's behalf, and has to decide what mix of litigation or other responses (or proposed settlement terms) are consistent with the *public and private* interests involved.

96. Where the matter complained of is not settled through investigation or related remedial action, the Commission may refer the complaint to a board of inquiry, which conducts a formal hearing under the auspices of the *Statutory Powers Procedure Act* and section 39 of the Code:

39. (1) The board of inquiry shall hold a hearing,

- (a) to determine whether a right of the complainant under this Act has been infringed;
- (b) to determine who infringed the right; and
- (c) to decide upon an appropriate order under section 41,

and the hearing shall be commenced within thirty days after the date on which the subject-matter of the complaint was referred to the board.

(2) The parties to a proceeding before the board of inquiry are,

- (a) the Commission, which shall have the carriage of the complaint;
- (b) the complainant;
- (c) any person who the Commission alleges has infringed the right;
- (d) any person appearing to the board of inquiry to have infringed the right;
- (e) where the complaint is of alleged conduct constituting harassment under subsection 2 (2) or subsection 5 (2) or of alleged conduct under section 7, any person who, in the opinion of the board, knew or was in possession of facts from which the person ought reasonably to have known of the conduct and who had authority to penalize or prevent the conduct.

(3) A party may be added by the board of inquiry under clause (2) (d) or clause (2) (e) at any stage of the proceeding upon such terms as the board considers proper.

97. The Commission has carriage of the complaint (section 39(2)(a)); and the statute spells out who the parties to the proceeding should be. The breadth of the inquiry's mandate is illustrated by the range of potential parties contemplated by section 39(2)-(3). In particular, section 39(2)(e) recognizes that in "harassment situations" the list of respondents should encompass not only those who have engaged in such misconduct, but also those who allowed it to happen or did not take steps to prevent it.

98. Unlike the Commission or its investigating officers, (or an inspector under the OHSA for that matter) a board of inquiry operates in a quasi-judicial fashion (like the Ontario Labour Relations Board). It receives the parties' evidence and representations, and makes its determination based upon the facts and law put before it. Its remedial powers are extensive, and are spelled out in general terms in section 41(1) of the Code:

41. (1) Where the board of inquiry, after a hearing, finds that a right of the complainant under Part I has been infringed and that the infringement is a contravention of section 9 by a party to the proceeding, the board may, by order,

- (a) direct the party to do anything that, in the opinion of the board, the party ought to do to achieve compliance with this Act, both in respect of the complaint and in respect of future practices; and
- (b) direct the party to make restitution, including monetary compensation, for loss arising out of the infringement, and, where the infringement has been engaged in wilfully or recklessly, monetary compensation may include an award, not exceeding \$10,000, for mental anguish.

99. The term “party” in section 41 Code extends to the range of “parties” contemplated by section 39 of the Code; so that when the two sections are read together, it becomes plain that the remedial authority of a board of inquiry is quite comprehensive. That remedial authority extends not only to persons who have acted improperly, but also to persons whose *inaction* should be subject to censure, because they had the authority to penalize or prevent the misconduct, and did not do so.

100. However, in keeping with the specific treatment and special character of harassment cases, the Code specifically contemplates *additional* remedies for harassment situations, as well as special obligations for those in a position to make sure that the harassment is not repeated. Indeed, a board of inquiry has a continuing mandate to monitor the situation. Section 41(2) of the Code reads this way:

41. (2) Where the board of inquiry makes a finding under subsection (1) that a right is infringed on the ground of harassment under subsection 2(2) or subsection 5(2) or conduct under section 7, and the board finds that a person who is a party to the proceeding,

- (a) knew or was in possession of knowledge from which the person ought to have known of the infringement; and
- (b) had the authority by reasonably available means to penalize or prevent the conduct and failed to use it, *the board shall remain seized of the matter and upon complaint of a continuation or repetition of the infringement of the right the Commission may investigate the complaint and, subject to subsection 36(2), request the board to re-convene and if the board finds that a person who is a party to the proceeding,*
- (c) knew or was in possession of knowledge from which the person ought to have known of the repetition of infringement; and
- (d) had the authority by reasonably available means to penalize or prevent the continuation or repetition of the conduct and failed to use it, the board may make an order requiring the person to take whatever sanctions or steps are reasonably available to prevent any further continuation or repetition of the infringement of the right.

(emphasis added)

The term “sanctions” in item (d) suggests that a board of inquiry has the power to require an employer to punish offenders - who, of course, are parties to the proceeding, in their own right, under section 39(2).

101. A board of inquiry is supposed to commence hearing the case within 30 days of referral (section 39), and render a decision within 30 days of the conclusion of its hearing (section 41(5)). There are no time limits on the length of the hearing, which presumably will depend upon the nature of the issues, and the availability of the adjudicator(s). If the board of inquiry denies a complaint, it has the power to award costs. If it sustains the complaint, it fashions an appropriate remedy in accordance with the powers mentioned above. An appeal lies to the Divisional Court on questions of fact, or law, or both, and the reviewing Court may substitute its opinion for that of the board of inquiry, and may make any order that the board of inquiry could make.

102. In addition to these administrative law remedies, there can be quasi-criminal sanctions as well. A prosecution for a breach of the Code can be launched with the consent of the Attorney General, and a person found guilty of breaching the Code, obstructing an investigation, or disobeying an order of a board of inquiry, may be liable for a fine of up to \$25,000.

103. I shall have more to say later about the operation of the Commission. At this point, I merely reiterate that the Legislature has specifically recognized the problem of gender discrimination and sexual harassment in the workplace, has addressed those issues with specific statutory language, and

has devised specific remedial prescriptions for dealing with these problems. Similarly, the Code specifically deals with “reprisals” for asserting statutory rights, and with a repetition of the prohibited conduct.

104. Those prescriptions in the Code are quite unlike those set out under the OHSA, and do not sit easily with them. Nor is it inappropriate to note the practical problems that might arise if inspectors under the OHSA are asked to deal with problems of sexual harassment or gender discrimination in the workplace (especially if the Human Rights Commission is also in the picture). For, with respect, there is no reason to believe that Ministry of Labour inspectors will have the resources, skills, time, or tools available to them to deal with those problems; and the enforcement powers set out in the OHSA do not fit very well in this kind of situation (again see and compare the powers of the Commission and a board of inquiry under the Code). Nor, quite frankly, do the statutes that this Board administers presuppose any specific expertise in human rights issues, or contemplate (at least explicitly) the kinds of remedies addressed in the Code.

* * *

105. “Enforcement” of the OHSA (a word which also appears in section 50 of the OHSA) is covered in Part VIII of the Act, which sets out the powers of a Ministry of Labour inspector to initiate an investigation or inquiry (sections 54-57) and make remedial orders if s/he “finds that a provision of [the] Act or the regulations has been contravened”. The Inspector comes to the scene either on his/her own motion or upon being called in by someone; and, if a contravention of the Act is found, the inspector may make a compliance order in various forms. Sections 57(1) and 57(6) provide:

57. (1) Where an inspector finds that a provision of this Act or the regulations is being contravened, the inspector may order, orally or in writing, the owner, constructor, licensee, employer, or person whom he or she believes to be in charge of a workplace or the person whom the inspector believes to be the contravener to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies.

• • •

(6) Where an inspector makes an order under subsection (1) and finds that the contravention of this Act or the regulations is a danger or hazard to the health or safety of a worker, the inspector may,

- (a) order that any place, equipment, machine, device, article or thing or any process or material shall not be used until the order is complied with;
- (b) order that the work at the workplace as indicated in the order shall stop until the order to stop work is withdrawn or cancelled by an inspector after an inspection;
- (c) order that the workplace where the contravention exists be cleared of workers and isolated by barricades, fencing or any other means suitable to prevent access thereto by a worker until the danger or hazard to the health or safety of a worker is removed.

• • •

106. These inspections and remedial orders are implemented by an inspector, on the spot, without formal hearing or quasi-judicial inquiry; and in addition to any other remedy or penalty, an order made under section 57(6) may be enforced by injunction proceedings in the Courts. However, the order may also be appealed to a designated OHSA adjudicator, who can confirm or rescind the original order or make a new order as if s/he were an inspector. The adjudicator acts in a quasi-judicial fashion - like this Board or a board of inquiry.

107. Whatever else might be said about the efficacy of this process, it is difficult to square with the quite different mechanism established by the Code to deal with gender discrimination and sexual harassment. And to that extent, it is difficult to envisage how the two processes would or should work together without conflict or confusion. For what can be said, is that it would make no practical sense to have the two processes engaged at the same time (or even sequentially); moreover, there is something intuitively attractive about the proposition that if the problem is a “human rights issue”, it ought to be dealt with by the Human Rights Commission.

108. This framework of OHSA rights and remedies, supervised by the Ministry of Labour, has very little to do with the Ontario Labour Relations Board. The Board enters the picture only peripherally through the application of section 50 (reproduced above). As the Board observed in *Exotic Lumber Inc.*, (Board File 4504-94-OH, unreported decision dated April 19, 1995):

3. The *Occupational Health and Safety Act* creates a series of reciprocal rights and obligations for employers, employees and others. The objective is to promote a safe work environment; and to that end, there is a web of regulations, restrictions, and reporting requirements. However, the enforcement of the *Occupational Health and Safety Act* is not the primary responsibility of the Ontario Labour Relations Board (see generally part 8 of the Act and in particular, the sections concerning “ENFORCEMENT”). Nor does the Board have the power to make the kind of remedial directions that an inspector can make under the *Occupational Health and Safety Act* (see for example section 54 and following).

4. The Board’s role under the *Occupational Health and Safety Act* is a very limited one. The Board is not concerned with the enforcement of the Act as such, but rather with situations where an employee claims that s/he has been penalized because s/he has sought enforcement of the Act. The focus of section 50 is the reprisal or the adverse *employment consequences* of pursuing rights, rather than the underlying situation in the workplace which the employee claims is hazardous. For example, if an employee is discharged for calling in a health and safety inspector, that employee may be reinstated as a result of a complaint to the Board. However, section 50 is concerned with the discharge, rather than the safety problem that prompted the employee to call the inspector in the first place.

109. The focus of the inquiry under section 50 is the alleged *reprisal* and the *employer’s motivation* - not the underlying safety problem. Accordingly, it is quite conceivable that a section 50 complaint could succeed or fail, without any determination that the situation was actually unsafe, and without any order from the Board to rectify that safety problem, if there is one.

110. A complaint fits under section 50(1) of the Act only if the complainant was penalized (etc.) *BECAUSE* s/he has “acted in compliance with this Act or the regulations, or an order made thereunder, [or] has sought the enforcement of this Act or the regulations ...”. There has to be a connection between the worker’s behaviour and the employment consequence, and also between what the worker was doing, and the rights and responsibilities set out in the OHSA.

111. That is why, in the instant case, two questions must be addressed: first, whether Ms. Musty was acting in compliance with some provision of the Act or seeking its enforcement; and, second, whether the employer’s response falls within section 50(1) (dismissal, intimidation, penalty) *and occurred because Ms. Musty was acting in compliance with or seeking the enforcement of the OHSA*. And that, in turn, raises legal issues about whether the OHSA covers sexual harassment at all, and whether Ms. Musty’s actions were or were not *thought* to have something to do with the OHSA prior to the filing of this complaint in November 1995.

112. Meridian says that the answer to both of these questions is “no”; and points out that, unlike section 43 of the OHSA where a worker need only have “reason to believe” that the workplace is unsafe, section 50(1) requires a worker to *actually be acting in compliance with the Act or seeking its*

enforcement. A belief - reasonable or otherwise - is not good enough; and Meridian says that, in any event, Ms. Musty never actually believed that her problem had anything to do with the OHSA.

113. Meridian argues that as a matter of statutory interpretation, the OHSA does not cover sexual harassment/gender discrimination issues of the kind raised in this case at all, but even if it did, this case does not fit under section 50. Meridian urges the Board to defer to the Ontario Human Rights Commission which has jurisdiction, and is better situated to deal with these kinds of issues.

Does the OHSA cover sexual harassment in the workplace, and should the Board inquire into complaints of this kind?

114. As a matter of statutory interpretation, does the OHSA cover sexual harassment in the workplace, so that a worker has access to OHSA procedures as an alternative to the Human Rights Commission and a board of inquiry under the *Ontario Human Rights Code*; and “should” this Board entertain complaints of this kind, given the array of rights and remedies set out in the Code? Counsel addressed these questions under separate headings, differentiating the issues of “*jurisdiction*” (or statutory interpretation) from the issues of “*discretion*” (or policy). Meridian argues that the Board has no jurisdiction to deal with the complaint, but, in any event, should exercise its discretion not to do so. Ms. Musty argues that the Board *has* jurisdiction and *should* exercise it because the Commission is too slow.

115. This was a sensible way to approach what is admittedly a novel case, and was a convenient way to structure the argument. However, upon reflection, it appears to me that these questions are intertwined. Because if this Board’s jurisdiction is doubtful or merely “arguable”, while the jurisdiction of another tribunal is clear, that may, in *itself*, suggest that the Board should not embark upon the inquiry. In other words, in exercising the *discretion* to inquire into a particular complaint (as to the discretionary nature of the exercise see: *Sheller Globe* (1983), 83 CLLC ¶14,052), I think that it is appropriate to consider whether the statutory foundation for doing so is clear or problematic - either from a substantive or remedial point of view. And such considerations may take on additional significance where, as here, the Board’s basis for intervention can be compared to that of another statutory tribunal.

116. So, is there an arguable case that sexual harassment could be covered by the OHSA?

117. In my view, there is.

* * *

118. As I have already noted, the OHSA is framed in very general terms in an effort to address workplace hazards of all kinds; because it would not have been feasible for the Legislature to try to foresee, and spell out in advance, all possible sources of danger in every conceivable work setting. The OHSA applies to workplaces as diverse as auto plants and golf courses; so what the OHSA does, is define specific risks (or levels of risk) in particular situations, then cast a general obligation on workplace parties to examine their own environment with a view to eliminating risks not specifically identified in the statute or regulations.

119. Against that background, it might be said that harassment may pose a risk to the employees’ health or well-being, and that harassment and gender discrimination could therefore be encompassed by both the purpose and the general language of the OHSA. Harassment could be considered to be a kind of “assault” on the psyche, which can arguably fit into the elastic language of the OHSA.

120. There is, of course, no regulation under the OHSA dealing with sexual harassment in the workplace - even though its treatment in the *Human Rights Code* confirms that the Legislature knew that this problem could arise in any work setting where people work together. On the other hand, although sexual (or other) harassment is missing from the OHSA (at least explicitly), there is some legislative guidance about how such problems should arguably be characterized.

121. The Workers' Compensation Appeal Tribunal has held under the *Workers' Compensation Act* that sexual harassment in the workplace can lead to a compensable psychological trauma and disability. It is workplace behaviour that has an injurious impact just like an accident or industrial disease; and the fact that it may be "intentional" or "illegal" behaviour is beside the point. It is an aspect of the work environment that can produce harm and compensable injury.

122. The *Human Rights Code* also recognizes that harassment and gender discrimination may produce "mental anguish", which warrants compensation. Again, there is statutory recognition that harassment in the workplace has an adverse impact on the victim.

123. These legislative references merely support the common sense inference that harassment or gender discrimination can have an adverse psychological impact on employees that, in a particular case, may not only make it difficult for an aggrieved employee to continue at work, but may also be damaging to an employee's mental health or well-being. Indeed, it is quite foreseeable that serious harassment could lead to stress, which, in turn, could have adverse physical and psychological manifestations. And if harassment results in a compensable disability, or its impact requires medical treatment, there is nothing incongruous about treating it as a "hazard", or "risk", or a threat to an employee's "safety" at work.

124. Once one accepts the notion of a *mental* illness, or *psychological* disability, it is no great leap to look for the cause in overt discrimination or harassment at work - or to treat such illegal behaviour as a "danger" to an employee's health. From this perspective, an employee's "health" might arguably include "mental health" - which the OHSA does not specifically mention, but does not rule out either. And once that proposition is accepted, the prevention of workplace harassment may well fall within the ambit of the very general duties imposed upon employers, employees and supervisors under section 25(2)(h) and 28(2)(b) and 27(2)(c) of the OHSA (see: the decision in *Lyndhurst Hospital*, [1995] OLRB Rep. Nov. 1371).

*

125. I have been somewhat tentative in the preceding paragraphs, because although all of these propositions are certainly "arguable", sexual harassment does not fit very well into the OHSA scheme - quite apart from the potential overlap with the investigatory and enforcement processes set out in the Code. Nor is there much reason to believe that issues of race, creed, colour (etc.) - which admittedly can cause tension or distress in the workplace - were ever intended to be dealt with under the OHSA (in addition to, or instead of the *Ontario Human Rights Code*). In fact, the specificity of the Code, the specific addition of harassment in 1981, and the specific remedial prescriptions for harassment cases, all suggest the opposite conclusion.

126. Sexual (or racial) harassment in the workplace may fit a literal or even a purposive reading of the term "hazard" in the OHSA, but the OHSA does not deal very clearly with problems of this kind, and the existence of the very specific provisions in the Code, suggests that the OHSA was not intended to do so. For as I have already noted, the Code is also an employment statute that regulates behaviour in the workplace, and prohibits both harassment and reprisals. Moreover, the powers of the Commission and a board of inquiry permit a focused or nuanced response to these specifically identified workplace

problems. This Board has no monopoly in the area of employment regulation, or even in the area of employment reprisals.

127. I shall have more to say about that below. At this point, I merely note that within the OHSA itself, the emphasis seems to be on *physical* threats to a worker's well-being, which may suggest that open-ended words like "health", "safety" or "hazard" should be construed in that light. For as the Court observed in *Colquhoun v. Brooks* (1889), 14 A.C. 493:

It is beyond dispute ... that we are entitled and indeed bound when constructing the terms of any provision found in a statute to consider any other parts of the Act which throw light upon the intention of the Legislature and which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act.

From this perspective, it might be said that general words like "hazard", "health", "danger", "precaution" should be interpreted in light of the way health and safety problems are considered elsewhere in the statute, and are limited to physical risks or hazards.

128. The provisions of the OHSA focus primarily - if not exclusively - on *physical* hazards in the workplace: on machines, devices, things, equipment, protective devices, building structures, dangerous biological or physical agents, and so on. (See, for example, sections 8, 9, and 25, and the powers of an inspector under sections 54-60). Even the right to refuse unsafe work under section 43 focuses on the "equipment, machine, device or thing the worker is to use" or the "*physical* condition of the workplace". The physical element is either implicit in the hazard specifically identified, or has been added by the Legislature, as in section 43 which gives an employee the right to refuse to work when the situation is unsafe. If section 43 had been intended to cover *any condition* in the workplace, the word "physical" would not have been necessary.

129. Not only does the OHSA appear to be concerned with physical threats of one kind or another, but the provisions of the OHSA do not seem to focus at all on "dangerous people", except in relation to physical activities or the dangerous operation of equipment. Thus, section 28(2) of the OHSA provides:

28. (2) No worker shall,

• • •

- (b) use or operate any equipment, machine, device or thing or *work in a manner that may endanger himself, herself or any other worker*; or
- (c) engage in any *prank*, contest, feat of strength, unnecessary running or *rough* and boisterous *conduct*.

Even *Barmaid's Arms*, [1995] OLRB Rep. March 229, a case upon which the complainant relies, involved a *physical* threat to the employee in question.

130. This is not to say that the OHSA ignores employee behaviour that could pose a danger to other workers. If an employee engages in violent behaviour at work, "rough conduct" or some ill-intentioned "prank", such behaviour may be caught by OHSA section 28(2), even though it may be a manifestation of misogyny, racism, or other problems addressed in the Code. One must be careful not to unduly limit the scope of OHSA protections, or assume too readily that behaviour can be precisely characterized or confined to precise legal compartments. It is simply that "hazardous words", "dangerous pictures" and "injurious attitudes" - the allegations in this case - do not fit very well into the range of risks to which the OHSA is specifically addressed. Nor are these the sorts of things that appear to be contemplated by the kinds of remedial orders that an inspector may make under section 57. The

provisions of the OHSA do not clearly speak to or easily encompass “dangers” to an employee’s *mental* health - be they overt and unlawful harassment (sexual, racial or otherwise) as alleged in this case, or simply conditions in the workplace which generate stress (technological change, impending layoffs, a new boss, friction with other employees, workload, etc.). Nor is it easy to accept that anything that causes “stress” is necessarily a “hazard” regulated by the OHSA.

131. Again, I do not suggest that the OHSA cannot be read to cover circumstances that impact upon the equanimity or mental health of employees - including the behaviour of other employees. It does not take much imagination to think of circumstances (or employee behaviour) that could cause annoyance, anger, anxiety, stress, or even, in extreme cases, mental illness - depending upon the situation, the response of the individual employee, and perhaps the other sources of distress to which an employee may be subject outside the workplace. For, the causes of “stress” are numerous, the responses to stress may be quite variable, [as WCAT has explored in cases such as: Decision No. 352/92 (August 22, 1995); Decision No. 916/94 (October 27, 1995); Decision No. 142/93 (November 21, 1995); Decision No. 528/95 (February 20, 1996) and Decision No. 511/95 (February 26, 1996)].

132. It is “arguable” that the general terms in the OHSA can be read to encompass this kind of “risk” to employee mental well-being. The point is, issues of this kind are not captured very well - or at least very explicitly - by the general provisions of the OHSA.

133. By contrast, the *Human Rights Code* does deal clearly and explicitly with certain kinds of harassment and discrimination in the workplace; and provides both administrative and adjudicative responses to those situations.

134. It is no accident that the Code deals with these matters in detail. It is no accident that the Code contemplates compensation for “mental anguish” while the OHSA does not. Nor is it accidental that a board of inquiry has been given a continuing supervisory responsibility in harassment situations (see section 41(2) of the Code reproduced above). In this regard, I might observe, parenthetically, that the continuing monitoring and enforcement powers that Ms. Musty wants *this Board* to exercise, or to give to the plant Health and Safety Committee, are among the remedial responses that are *specifically contemplated* for a board of inquiry under the Code. A board of inquiry can also deal with employer “inaction” or require it to punish someone; and the Commission can develop a program to counter a “poisoned work environment”.

135. If it requires a bit of stretching to make the elastic language of the OHSA “fit” sexual harassment and dangers to mental health of the kind raised in this case, it requires no such exercise to bring them under the *Human Rights Code*. If the ability to intervene and rectify the situation is debatable under the OHSA, there is no such problem under the *Human Rights Code*.

* * *

136. In the foregoing discussion, I have juxtaposed the provisions of the OHSA and the Code, because one of the arguments before me is whether the OHSA provides an alternative method of resolving issues that are quite clearly addressed in the Code. As I have already mentioned, Ms. Musty claims that an environment poisoned by harassment and discrimination (gender, race, ethnicity, etc.) poses a hazard like any other, and that the OHSA provides an alternative mechanism for dealing with these problems. And, as I have tried to show earlier, I think there is at least an “arguable case” for that proposition - even though it may lead to operational difficulties.

137. However, it appears to me that there is also an alternative and arguably less-strained reading of the OHSA, using the Code as an aid to interpretation, and a clue to the Legislature’s intentions.

138. It seems to me that it is arguable that the ambit of the two statutes can be illuminated if they are read together rather than separately, and that the meaning of the general terms found in the OHSA may be better understood if read together with the related employment statute. One should look not only to the words found in the OHSA, relating them to one another to glean their meaning, but also at the words in other employment statutes that appear to address the situation too.

139. Meridian suggests that when the two statutes are read together in this way it becomes plain that the subject of sexual (or other) harassment is excluded from the ambit of the OHSA and has been accorded special treatment under the Code. And in my view, there is something to be said for that position.

140. In other words, if there is an “arguable case” that OHSA applies to gender discrimination and harassment, there is also a good argument that it does not (see the minority view in *Lyndhurst Hospital, supra*).

* * *

141. If it is said that general words like “hazard” or general obligations like “taking every precaution reasonable in the circumstances for the protection of a worker” should be given a large and liberal interpretation so as to embrace harassment issues - at least arguably; I think that there is also much to be said for Meridian’s argument that statutes enacted by a Legislature that might appear to deal with the same subject matter should be presumed to be drafted with one another in mind, so as to offer a coherent and consistent treatment of the subject. That was the approach taken in *Canada v. PSAC* (1991), 80 D.L.R. (4th) 520, where the Supreme Court of Canada found it necessary to examine three federal statutes in order to construe the term “employee” found in the *Public Service Staff Relations Act*. The Court gave content to the word “employee” in the PSSRA by looking at how *other* federal statutes used the term. Similarly, in *Nova Corp. v. Amoco Canada Petroleum Co. Ltd.* (1981), 128 D.L.R. (3d) 1 (S.C.C.), Estey, J. observed:

While each statute must, for the purpose of its interpretation, stand on its own and be examined according to its terminology and the general legislative pattern it establishes, sometimes assistance in determining the meaning of the statute can be drawn from similar or comparable legislation within the jurisdiction or elsewhere.

142. What the Courts appear to be saying is that one should not take an unduly literal approach to statutory interpretation, divorced from the *overall legislative context* - including legislative history and other statutes which deal with the same subject matter. The objective is an *informed* interpretation of the text - which does not discount a literal reading, but which also takes into account other indicators of legislative meaning, including the potential consequences of an interpretation (which, of course, may have nothing to do with the text itself), and how the debated statute “fits” with others.

143. From that perspective, it seems to me that Meridian has a credible argument that the general terms found in the OHSA (“hazard”, “danger”, “safety”) should be read together with the more specific language found in the Code, so as to yield a result that is plausible in the context of the overall statutory scheme - not just the statute in which the disputed terms appear. On this analysis, one could reasonably conclude that the Legislature has carved out a range of workplace behaviour - gender discrimination and harassment - for particular treatment under its own statute, and has, by implication, removed that behaviour from the regulatory ambit of the OHSA. What might otherwise be regarded as a workplace “hazard” if one adopts a literal and generous reading of that term, has been removed and accorded special treatment under the Code (just as, in a different way, smoking in the workplace - while undoubtedly a “hazard” in a general sense - has been accorded special treatment under the *Smoking in the Workplace Act* which modifies and supplements the provisions of the OHSA).

144. On this approach, general words like “hazard” take their colour and content from the overall regulatory scheme - including other employment related statutes - not just the single statute under review; so that in a case like this one, the presence of specific treatment in the Code could be taken as evidencing a legislative intention to *exclude* gender discrimination from the OHSA. Moreover, this reading avoids some of the problems associated with “dangerous words, images or attitudes posing a threat to mental health” which, conceptually, do not fit very well with the rest of the OHSA.

145. But whether Ms. Musty’s proposed interpretation is correct, or Meridian’s proposed interpretation is correct, I think there is something to be said for both positions, and it seems to me that that is something that the Board can consider when deciding whether to commence litigation under the OHSA.

146. In summary, the reading of the OHSA urged upon me by Ms. Musty poses both practical and interpretative difficulties that I think this Board can take into account when deciding whether to exercise its discretion to inquire into a “section 50 complaint”. And in exercising that discretion, I think that it is also appropriate to take into account the existence of an alternative statutory forum with specific and unequivocal statutory responsibility to deal with gender discrimination and workplace harassment. For there is really no doubt that, to the extent that the Legislature has explicitly addressed these issues at all, it has done so in the Code - not the OHSA.

* * *

147. The Code contains provisions dealing with the precise conduct in question in this case (including alleged reprisals), as well as provisions mandating a range of responses and remedies that can be deployed by the Commission and/or a board of inquiry. Those proscriptions and prescriptions are both clear and specific. They deal with the underlying cause of the problem, the question of reprisals, and the issues of inaction and potential repetition. And they contemplate (and permit) a more broadly-based approach to the question of a “poisoned work environment”.

148. By contrast, even under an expansive interpretation of the OHSA, this Board has only a narrow residual role in this area - and then only in respect of a reprisal (if there is one) connected to the exercise of statutory rights (if that is really what the complainant was doing in this case).

149. In my view these specific legislative pronouncements, and the availability of an alternative *statutory* tribunal to deal with such matters, both suggest that that is the way that the Legislature has intended that issues of this kind should be addressed - even though there is an argument that this Board may have jurisdiction too. Human rights issues were intended to be dealt with by the Human Rights Commission under the *Human Rights Code* - not by this Board under the OHSA. And that is an additional reason why this Board should exercise its discretion not to hear this complaint - in effect, to defer to the Code and the Commission.

150. There is nothing startling about one tribunal declining to embark upon litigation because there is an alternative forum available - particularly if that forum seems more appropriate, and, as here, seems to have been designed by the Legislature to deal with precisely those issues. Even the Courts, which have an inherent common law jurisdiction, have sometimes stayed a civil action when the subject matter of the case appeared to be a human rights issue that was the subject of concurrent litigation before the Commission. In such cases, there was usually no question that the Court had *jurisdiction* to proceed if it wished to do so. Rather, the question was whether it *made sense* to proceed, given the potential for duplication of effort, overlapping remedies, and inconsistent findings.

151. In my view, these are factors that a statutory tribunal can also take into account, along with the apparent legislative intent and the public and private costs involved in overlapping litigation.

152. Nor are such notions of “deferral” foreign to the Board’s own jurisprudence, or to the exercise of the Board’s unfair labour practice jurisdiction that is given to the Board by its governing statute (and incorporated to some extent into the OHSA via sections 50(2) and 50(3)).

153. For many years the Board has had a “policy” of deferring to arbitration when the essence of an alleged unfair labour practice complaint is the breach of a negotiated collective agreement (see the decision of the Board in *Valdi Inc.*, [1980] OLRB Rep. Aug. 1254). This deferral policy is rooted in section 49 of the *Labour Relations Act* which creates a presumption in favour of arbitration for the resolution of such matters - even though, to the extent that there is an alleged breach of the *Labour Relations Act*, they could also be addressed under section 93 of the Act.

154. Section 56 of the *Labour Relations Act* that makes a collective agreement “binding”, so that any refusal to comply with the terms of a collective agreement might “arguably” be considered a breach of the Act. Indeed, the Board has sometimes enunciated that view. And there will be plenty of circumstances where an alleged breach of the collective agreement might also be characterized as an unfair labour practice, so as to fall within the “jurisdiction” of the Board. However, by and large, the Board has been reluctant to pre-empt the primary process of dispute resolution contemplated by the Legislature, even though the Board has exclusive jurisdiction to interpret and apply the *Labour Relations Act* and has much broader powers than a Board of Arbitration. The Board has jurisdiction, but it has not been inclined to exercise it when the scheme of the Act suggests that another forum is to be preferred.

155. It appears to me that the same kind of approach is advisable where, as here, the Legislature has so clearly designated the Commission as the primary forum for dealing with problems of this kind. If anything, there is a stronger case for deferral where the rights in issue are so clearly addressed, where the alternative forum has its own *statutory* framework, where the *statutory* remedies appear to be broader than those this Board could give, and where the OHSA jurisdiction is debatable. In this respect, the situation here is not like deferral to a privately negotiated process like grievance arbitration. Rather, the Board is recognizing the role of another statutory body with its own specific legislation and public mandate in this area. And while I do not think that the “practicalities” of the situation should necessarily govern the result, neither should the Board take a parochial approach and ignore the problems of (potentially) overlapping jurisdictions.

156. The modern workplace is now subject to an array of arguably overlapping statutes, which, in turn, can foster multiple litigation in different forums arising out of the same basic work setting. The instant case is a classic example, involving (among other things) a request for compensation in the Courts, and broadly similar or related relief under three separate statutes (Workers’ Compensation, the OHSA, the Code) administered by several different statutory agencies and tribunals (the WCB and WCAT, the Human Rights Commission and a board of enquiry, and the Ontario Labour Relations Board). And if the OHSA applies generally, as Ms. Musty says it does, one could add inspectors from the Ministry of Labour and the adjudication/appeal procedures under the OHSA as well.

157. This checkerboard of statutory rights and remedies is not only a recipe for inconsistent results as each agency or tribunal sifts through the facts from its own perspective, but in the circumstances, I do not think that it is inappropriate to consider the public and private costs of an exercise in which several statutory agencies are all being called upon to look at, and potentially litigate about, the same behaviour. On the contrary, it appears to me to be entirely appropriate that before plunging ahead, one tribunal should take into account what another tribunal is doing or was designed to do.

158. Now, of course, Mr. Kopyto is quite correct that in each forum and under each statute the rights, remedies and procedures are different. For example, in the Courts and under the Code, Ms. Musty can get or may have to pay “costs”. Before this Board she cannot obtain costs nor does she have

to worry about paying them. In the Courts, Ms. Musty can (potentially) get punitive damages or significant sums for mental distress, while neither this Board nor a board of inquiry give punitive damages, compensation for mental distress under the Code is capped at \$10,000, and this Board has no established practice of compensating employees for stress. Under the Code there are special remedies for harassment situations including continuing supervision of the workplace, but there is also a full right of appeal to the Courts on all matters of fact or law. Under the OHSA, there is no similar remedy specified and no similar right of appeal, but the Board's decision is protected by a privative clause. Under the OHSA the Ministry of Labour can move directly to prosecute persons who have breached the OHSA, while under the Code, a quasi-criminal prosecution requires the consent of the Attorney-General. By contrast, the *Workers' Compensation Act* is a no-fault scheme which, if triggered, precludes other statutory and common law remedies once it is determined that a disabling condition really is related to the situation in the workplace (and not other aspects of an employee's life).

159. However, in my view, this jurisdictional jumble merely illustrates the problem, and is something that the Board should take into account before embracing a novel legal proposition, and generating another layer of litigation.

160. I do not think that it is necessary to multiply the examples. The fact is, what this case is really about is sexual harassment in the workplace and what is necessary to remedy that situation - both for Ms. Musty herself, and for other employees working in the allegedly "poisoned work environment". This is not an area in which this Board can claim any specific expertise, and it is debatable whether there is a foundation for intervention under the OHSA - and then only if the circumstances fit the narrow, no-reprisal provisions of section 50. And if a breach of section 50 were established, there is no reason to believe that this Board's remedial authority is as broad as that of the Commission or a board of inquiry - or that this Board could even impose the range of remedies that Meridian has already agreed to. This Board has never undertaken its own investigations, organized or imposed anti-harassment programs, supervised a workplace on a continuous basis, inserted a "just cause" clause into a collective agreement or contract of employment, invested a health and safety committee with quasi-judicial powers to adjudicate discrimination complaints, ordered an employer to punish a supervisor, or even given significant damages for mental distress.

161. Whether or not these particular remedies are available under the Code in this case, I think that it is clear that the Commission and/or a board of inquiry are better situated to deal with these problems than this Board is under section 50 of the *Occupational Health and Safety Act*. Indeed, since Meridian says that it is trying to get the grievor back to work, and the grievor says that it is first necessary to rectify the poisoned work environment, the central issue in this case is not reprisal or reinstatement but rather remedying harassment and gender discrimination - something that falls squarely within the central jurisdiction of the Commission under the Code. The situation in this case is not unlike that before the Board in *David Gazit*, [1996] OLRB Rep. July/August 635, (Board Files 0616-95-U and 0617-95-U), where the Board declined to enquire into the complaint and observed:

... All of Mr. Gazit's concerns are, at root, his assertion that he has been subjected to an ongoing pattern of discriminatory treatment by reason of his age, creed, and sex. His concern about a "poisoned work environment" all stem for what he has consistently asserted are human rights violations.... Even assuming that the withdrawal of [the Human Rights complaints] might be a factor in my determination, the complaints were extant when the issue was put before me. Mr. Gazit is forum shopping. It is inappropriate, and an enormous waste of public and private resources. All of the concerns that Mr. Gazit has raised are before the Human Rights Commission. The remedies he seeks are also more within the ambit of the Commission's usual and often broader remedial work.

* * *

162. The only hesitation that I have - and it is a serious one - relates to the delay that Ms. Musty may face in getting *any remedy at all* from the Commission under the Code. For there is no doubt that

the Commission's investigation and settlement efforts are often time-consuming - partly because the Commission conducts its own investigation and partly because the Commission's mandate may go beyond the specifics of the particular complaint. However, a model of direct workplace intervention, investigation and mediation (however successful in the end), means that litigation of unresolved issues may be postponed for many weeks or months - a scenario that at best causes frustration, and at worst causes real hardship for aggrieved employees.

163. On the other hand, the tools available to the Commission to remedy the situation are generally broader than those available to the Courts (which are not very fast either), or those typically utilized by this Board (reinstatement, compensation, notices); and they can be employed apart from, or in addition to, litigation. Indeed, in a "human rights context" it may not be wise to leap to litigation at the expense of mediation or other less formal methods of reconciliation and dispute resolution. Moreover, to the extent that the problem is rooted in traditional attitudes, ignorance, or insensitivity, the approach of the Commission may well provide a more lasting solution. And, in these days of financial constraint, this Board's resources are not unlimited either, so that for that reason too, it is relevant for the Board to consider whether the issues in dispute fall squarely within its own jurisdiction, or appear to be dealt with somewhere else.

164. All things considered, I am not persuaded that this Board should commence an inquiry merely because the Commission may be slow in processing Ms. Musty's complaint; or that this Board should step in because of the way another tribunal uses its resources. And, in this particular case, the Commission does not seem to have been unresponsive at all - although it has not rushed to establish a board of inquiry. So far as I can determine from the record, an investigation is ongoing, Meridian is co-operating, and the Human Rights officer has offered his assistance in effecting a settlement - just as the Code contemplates.

165. More fundamentally, though, it is evident that the issues in dispute in this matter are central to the jurisdiction of the Commission and/or a board of inquiry under the Code; and while there is no formal policy of comity or deferral as between administrative tribunals, I think that, from a public policy point of view, it is relevant to consider whether it appears that one or the other of them was intended by the Legislature to deal with the problem in question. Where the legislative choice is clear, that choice should be respected - both by other statutory tribunals and by potential litigants. Thus, in my view, it would not matter in a case like this one, whether or not a complainant had filed a "human rights" complaint (see the remarks of the Board in *Gazit* above). I acknowledge that it is possible to conceive of situations of significant statutory overlap, but in my view, where the issue is essentially a "human rights problem" of the kind that the Code was designed to deal with, that is the framework and forum within which an aggrieved employee should seek a remedy.

166. In the circumstances, it is my view that it is appropriate to defer to the procedures of the Code and the Commission, even if they are sometimes slow and there is some argument that the situation could be addressed under the OHSA. In my view, there are no compelling policy reasons for the Board to initiate an inquiry where, as here, the subject matter of the case is substantially (if not completely) covered by the Code, and those matters are central to the jurisdiction and expertise of the tribunal(s) established under the Code to deal with them. To reiterate: remedying gender discrimination and harassment (including reprisals) is the work of the Human Rights Commission and boards of inquiry under the Code - not the Ontario Labour Relations Board under the OHSA.

167. For the foregoing reasons, I am satisfied that it is appropriate to exercise my discretion under section 50(3) of the OHSA *not* to inquire into this complaint.

168. Such decision is, of course, without prejudice to Ms. Musty's rights at common law, or under any other statute, or in any other forum.

1446-96-R Labourers' International Union of North America, Local 837, Applicant v. Metric Contracting Service Corporation, Responding Party

Certification - Construction Industry - Board in earlier decision directing second representation vote after declining to count single segregated ballot cast by voter ruled eligible to vote - Union seeking leave to withdraw certification application on day prior to scheduled date of second vote - Board imposing 12 month bar on new certification application by union under section 7(9) of the Act on ground that employees' wishes had been effectively tested and that there ought to be a period of repose

BEFORE: *Robert Herman*, Alternate Chair, and Board Members *W. N. Fraser* and *G. McMenemy*.

DECISION OF THE BOARD; November 7, 1996

1. This is an application for certification pertaining to the construction industry.
2. A representation vote relating to this application took place on August 23, 1996. At the time of the count, there was one segregated ballot, and three unchallenged ballots. A hearing was held on October 9 and 10, 1996 before a different panel to hear the evidence and representations of the parties with respect to the challenge to the one segregated, and uncounted, ballot.
3. The Board concluded that the employee who had cast the challenged ballot was eligible to vote, but also ruled that it would not count his segregated ballot, since to do so would reveal how he voted. Accordingly, the Board directed the taking of a second representation vote. The list of eligible voters remained unchanged.
4. On the day prior to the scheduled date of the taking of that second representation vote, the applicant wrote to the Board requesting leave of the Board to withdraw the application. The representation vote scheduled for the next day accordingly did not take place, although there was no written decision of the Board to that effect.
5. Both parties have now written to the Board with respect to how the Board ought to exercise its discretion under the *Labour Relations Act, 1995*, and whether or not the Board ought to impose a bar upon the applicant, pursuant to section 7(9) of the Act. Section 7(9) of the Act reads as follows:

7. (9) If the trade union withdraws the application before a representation vote is taken, the Board may refuse to consider another application for certification by the trade union as the bargaining agent of the employees in the proposed bargaining unit until one year or such shorter period as the Board considers appropriate has elapsed after the application is withdrawn.
6. The Board has had recent occasion to comment upon section 7(9) of the Act. In *Sara Lee Bakery Canada*, [1996] OLRB Rep. May/June 480, the Board wrote in part as follows:

41. As stated earlier, the Act contemplates that bargaining rights can be acquired primarily by obtaining the support of the majority of the employees voting. The Act also contemplates a period of repose, following the testing of the wishes of the employees in the bargaining unit by means of a vote. The focus of the bar provisions is on whether the wishes of the employees have been tested by means of a representation vote. It is only *after* the wishes of the employees have been tested by

means of a representation vote, that a bar of one year will be imposed. In our view, this reinforces our view that section 7(9) gives the Board a discretion whether or not to impose a bar, *before* a vote is taken. Subject to our comments below, prior to the taking of the vote, the wishes of the employees have not been tested with sufficient certainty to justify the imposition of a bar against a further application by the applicant trade union.

42. The legislative scheme of the Act with respect to the imposition of a bar in certification application cases does not deviate significantly from the Board's approach to that issue under the previous Act. In the past, the Board had a discretion to decide whether or not to impose a bar and the length of bar, following an unsuccessful certification application. The Board's approach in the past was twofold. The Board generally imposed a bar following an unsuccessful representation vote. This approach has now been codified in section 10(3) of the Act. In keeping with that approach, the Board also imposed a bar where the trade union sought to withdraw its application for the purpose of avoiding an unfavourable result at the vote. In those cases, the certification process had advanced sufficiently so that the Board was satisfied that the wishes of the employees were clear. The focus of the Board's inquiry was whether the wishes of the employees to be represented by the applicant trade union had been clearly tested. Section 7(10) may be seen as a codification of that approach. Where the representation vote has been taken, a withdrawal by the applicant will still trigger the one year bar. Finally, in the past, the Board has imposed a bar where the applicant trade union made repeated, unsuccessful certification applications in a short period of time. Again, the focus of the Board was on the wishes of the employees, which had been tested with some degree of certainty through the mechanism of repeated, unsuccessful applications. The purpose of the bar, the Board has stated, is to foster orderly labour relations by means of a period of repose, after the wishes of the employees have been tested. (See *Amarcord Carpenters Ltd.*, and *R.J.R. MacDonald Inc.*, *supra*).

43. The Board's jurisprudence is still useful in guiding the Board in the exercise of the discretion in section 7(9) of the Act. In our view, the Act contemplates that the focus of our inquiry should be on whether the wishes of the employees on the issue of representation by the applicant have been tested with sufficient certainty so as to give rise to the need for a period of repose on that issue. The Board must also be satisfied that the union is not abusing the Board process by, for example, making repeated applications.

7. Here, there was a representation vote, in which four ballots were cast. Three of the ballots were not challenged and were counted, with the remaining ballot segregated. That ballot was the subject of challenge, and the Board subsequently ruled that it was cast by an eligible voter. However, the Board concluded that a new vote should be held, since to count the single segregated ballot would in the circumstances necessarily reveal the wishes of that individual employee.

8. In the second representation vote, the eligible voters would have remained the same (since in the construction industry, those employees eligible to vote are those who were employed in the bargaining unit on the application date). The day before the representation vote was to have taken place, the applicant withdrew the application.

9. The Board is satisfied that section 7(9) is the applicable section to these circumstances. Although a prior representation vote was held, the Board subsequently concluded that the vote had to be taken again, and the first vote was effectively nullified or cancelled. In these circumstances, for purposes of the bar, it is as if a representation vote has not been held.

10. There still remains the question of how the Board ought to exercise its discretion with respect to the imposition of a bar. In exercising our discretion, the Board agrees with the approach described in *Sara Lee Bakery Canada* (set out above). As the Board stated in that case, "the Act contemplates that the focus of our inquiry should be on whether the wishes of the employees and the issue of representation by the applicant have been tested with sufficient certainty so as to give rise to the need for a period of repose on that issue".

11. Realistically and practically, the wishes of employees have been fully tested in the instant application. There was an initial representation vote, the three unchallenged ballots were counted, and the results were disclosed to the parties. Only a single ballot remained the subject of challenge. The employer asserted that the individual who had cast that ballot was eligible to vote, and the applicant union took the contrary position. The employer's position prevailed, and the Board determined that the individual in question was eligible to vote. The Board directed that a second representation vote be held, at which only the same four people who had previously voted were eligible to vote.

12. In these circumstances, it is much more probable than not that the parties were aware of the wishes of the challenged employee, and that the wishes of employees have truly been tested. And as the Board indicated in *Sara Lee Bakery Canada*, once this has been done, there ought to be a period of repose.

13. Under section 7(10) of the Act, where an applicant union withdraws a certification application after a representation vote has been taken, the Board is required to impose a bar of one year. Employee wishes would have been tested by a vote, and given this, the Legislature has determined that a fresh application is to be barred for one year. Where the Board has a discretion under section 7(9) to impose a bar for up to one year, as the Board noted in *Sara Lee Bakery Canada*, the focus of the Board's inquiry is similarly on whether the wishes of the employees to be represented by the applicant union have been tested.

14. Since we have concluded that the wishes of employees have been effectively tested in the instant application, it is appropriate in our view for a bar to be imposed and for it to be one year in length, reflecting a period of repose similar to the period that results after a vote has been held.

15. Therefore, the Board will not consider another application for certification by the applicant trade union as the bargaining agent of the employees in the proposed bargaining unit until one year has elapsed from the date in which the application was withdrawn, which was October 15, 1996.

0656-96-U; 2259-96-U Service Employees International Union, Local 204, Applicant v. **The Ontario Realty Corporation (ORC)**, David Johnson, Frank Raposo and Signature Building Maintenance Systems, Responding Parties; Service Employees International Union, Local 204, Applicant v. David Johnson, Responding Party v. Ontario Federation of Labour, Ontario Public Service Employees Union, Ontario Liquor Board Employees Union, United Steelworkers of America and Amalgamated Transit Union Local, Local 1587, Intervenors

Contempt - Natural Justice - Practice and Procedure - Unfair Labour Practice - Union asking Board to state case for contempt against Chair of Management Board as result of press accounts of certain comments attributed to him regarding Labour Relations Board - Union also alleging that Board lacking requisite structural independence and reasonably perceived to be partial as result of government's recent removal of vice-chairs prior to expiry of terms of appointment, government's role in selection of the vice-chairs removed, recent re-appointment "at pleasure" of two vice-chairs, certain comments attributed to Chair of Management Board, and allegations regarding control of Chair of Management Board over Ministry of Labour's list of approved arbitrators - Vice-Chair presiding at hearing disclosing that he and all other vice-chairs possess information concerning process of selection of vice-chairs for removal, but declining to reveal content of that information - Board accepting respondents' submission that disclosure raising reasonable apprehension of bias - Board staying proceedings

BEFORE: *Kevin Whitaker*, Vice-Chair.

APPEARANCES: *L. A. Richmond, Vanessa Payne* and *A. Ferens* for the applicant; *Frank Raposo* for ORC; *Allen Craig* for Signature Building Maintenance Systems; *David Strang, Dennis Brown* and *Marylee Farrugia* for the other responding parties; *Brian Shell* for the United Steelworkers of America; *Ian Fellows* for Amalgamated Transit Union, Local 1587; *Bernard Fishbein* and *Peter Shklanka* for Ontario Liquor Board Employees Union; *Gavin Leeb* for Ontario Public Service Employees Union; *James Hayes* for Ontario Federation of Labour.

DECISION OF THE BOARD; November 27, 1996

I

Brief overview

1. For the first time in its 50 year history, the Board has been asked to find a Minister of the Crown to be in contempt. The applicant also challenges the perception of the Board as impartial and independent.
2. These claims are met by the almost equally rare response that the Board is unable to hear this request because of an apprehension of bias. The apprehension of bias is raised as a result of disclosures made by the Board about its knowledge of certain facts in dispute between the parties.
3. For reasons which comprise the balance of this decision, I find that, because of a reasonable apprehension of bias, the application in Board File No. 2259-96-U dealing with the issues of contempt, independence and impartiality, cannot proceed before the Board.

Circumstances of the case

4. This matter consists of two applications made pursuant to section 96 of the *Labour Relations Act, 1995* (the "Act"). Both are brought by the Service Employees International Union, Local 204. David Johnson, M.P.P., Minister of the Crown and Chair of the Management Board of Cabinet for the Crown in Right of Ontario is a respondent in both applications. The Ontario Realty Corporation, Frank Raposo and Signature Building Maintenance Services Ltd. are respondents in the application in Board File 0656-96-U.
5. The Ontario Federation of Labour, Ontario Public Service Employees Union, United Steelworkers of America, Ontario Liquor Board Employees Union and the Amalgamated Transit Union, Local 1587 have all sought to intervene. On consent, these parties have participated fully in the preliminary proceedings involving both applications. The respondents object to the participation of these parties in any capacity if the matter proceeds on the merits.
6. The application in Board File No. 0656-96-U was filed on May 29, 1996. Various unfair labour practices are alleged to have been committed by the respondents. The thrust of the complaint is that the respondents gerrymandered the bidding process for commercial cleaning contracts at the Queen's Park Complex, to defeat bargaining rights either held or sought by the applicant.
7. The respondents deny that any breach of the Act has occurred. They took the position that the application was untimely.

8. In a decision of the Board dated October 22, 1996, I dismissed the timeliness objection and ordered the respondents to proceed first with their evidence if any is to be called. This application was set to reconvene for three days beginning on November 12, 1996.

9. On October 31, 1996, the application in Board File No. 2259-96-U was filed. The substance of the application is threefold. Firstly, that the Board is reasonably perceived to be partial and therefore unable to proceed with either of the applications in Board Files Nos. 0656-96-U or 2259-96-U. Secondly, that the Board is reasonably perceived to lack the requisite structural independence for the exercise of its quasi-judicial function and cannot proceed with the two applications for that reason. Thirdly, that the Board should, pursuant to section 13 of the *Statutory Powers Procedure Act* R.S.O. 1990 c. S.22 as amended, state a case of contempt to the Divisional Court as against David Johnson. Finally, the applicant takes the position that the applications in both files cannot be heard by the Board. It requests that the Board appoint, on the advice of a Judge of the General Division, a Chair or Vice-Chair of a Labour Relations Board outside of the Province of Ontario to hear the matters.

10. The application in Board File No. 2259-96-U asserts that the Board appears to be biased because of the conduct of David Johnson and the Government of Ontario. There are four principal allegations in support of this claim. Although particularized in greater detail in the application, the allegations are as follows:

- i) in October 1996, four Vice-Chairs of the Board were removed from office before the expiry of their terms of appointment. It is alleged that David Johnson and the Government of Ontario selected or influenced the selection of the four Vice-Chairs to be removed from office;
- ii) two Vice-Chairs of the Board were reappointed to new terms of office in October 1996. For the first time in the history of the Board, the form of the Orders in Council used for purposes of reappointment were explicitly "at pleasure";
- iii) in October 1996, David Johnson commented to the press on the fact that the Toronto Transit Commission (the "TTC") was unable to operate during the "Day of Protest" in Toronto. It is alleged that, in the context of these remarks, David Johnson suggested to the press that he may review the membership of the Board for the way in which it had dealt with an illegal strike application by the TTC prior to the "Day of Protest";
- iv) upon retiring from the Board, it is common for Vice-Chairs to practice as labour arbitrators. It is alleged that David Johnson has the power to determine the career prospects of Vice-Chairs by controlling their access to the Ministry of Labour's appointment list for labour arbitrators.

11. The respondents deny that any breach of the Act or contempt has occurred. Many of the applicant's allegations are denied. Perhaps most importantly for purposes of this decision, the respondent David Johnson denies that he or the Government of Ontario either directly or indirectly influenced the choice of which four Vice-Chairs would be removed from office. David Johnson alleges that the selection was done by the Chair of the Board.

12. In light of the pending hearing dates in the application in Board File No. 0656-96-U and the applicant's request that neither application proceed before the Board, the parties were invited to make submissions on how the matters should proceed. The applicant agreed to proceed before the Board in

the absence of the Board granting its request to appoint an adjudicator outside of Ontario to hear the matter. The applicant reserved its right to object to the process at a later date on this basis. With this reservation, all parties agreed that the two applications should be heard together, with the application in Board File No. 2259-96-U being dealt with first. By decision of November 8, 1996, I directed the two applications to proceed in this manner.

13. At the outset of the hearing of both applications on November 13, 1996, counsel for the respondents proposed that the issue of the perceived independence of the Board could be separated from the other issues raised in this matter and, one way or the other, brought quickly before the Divisional Court for determination. Although the applicant and all of the intervenors candidly agreed that this matter would inevitably end up before the Divisional Court, the applicant and some of the intervenors opposed the respondents' proposal. The applicant asserted that all of the allegations pled were relevant to the three issues of independence, impartiality and contempt. The applicant argued that it should not be precluded from presenting its case in this fashion.

14. During the hearing on November 13, 1996, I indicated that, as a Vice-Chair of the Board, I was privy to information provided to all Vice-Chairs concerning the process used to select the four Vice-Chairs whose Orders in Council were revoked in October 1996. The applicant, the respondents and some of the intervenors addressed the significance of this advice and whether it would have a bearing on the process of the litigation. At the time of this discussion, I had yet to review the response by David Johnson. It had been filed with the Board but not placed before me.

15. At the beginning of the second day of hearing on November 14, 1996, I provided the parties with an oral ruling confirmed in writing later that day. Two issues were dealt with in this decision. Firstly, it was decided that evidence on all three issues of impartiality, independence and contempt should be heard together. Secondly, certain disclosures were made to the parties.

16. The disclosures contained in the decision of November 14, 1996 and their circumstances are found in the following paragraphs of that decision:

• • •

13. I have now had an opportunity to review the application and the response together. In paragraph 8 of the application, it is alleged that the Government of Ontario, its Cabinet and the respondent Johnson chose or directly or indirectly influenced the choice of the particular Vice-Chairs of the Board who would have their Orders in Council revoked in October 1996. Paragraph 4 of the response read together with sub-paragraph 6(l) and paragraphs 4 and 5 of Schedule "A" to the response, suggest that the respondent Johnson, the Government of Ontario and its cabinet played no role in the choice of which Vice-Chairs of the Board would have their Orders in Council revoked.

14. Given this dispute of fact and arguably, the conclusions of law which may flow from any findings which may need to be made in this regard, I feel obliged at this point in the proceeding to make the following disclosures.

15. All Vice-Chairs of the Board meet regularly with the Chair and the Alternate Chair in what is referred to as the Vice-Chair Group. Part-time Vice-Chairs are entitled to attend these meetings but do so infrequently. The purpose of these meetings is to discuss issues of general law and policy as well as administrative matters within the Board. During the course of a meeting of the Vice-Chair Group in September or October of 1996, Vice-Chairs were provided with information concerning the selection process used to choose which Vice-Chairs would have their Orders in Council revoked. The information which was provided at the meeting in question would be in the possession of the Chair, the Alternate Chair or any Vice-Chair of the Board, regardless of whether they actually attended the meeting in question. Finally, it is important to note that I was not a participant in the decision making process which led to the decision concerning the four Vice-Chairs, nor do I have any first hand knowledge of the process except for what I have disclosed. Finally, the information

provided to Vice-Chairs at this meeting is inconsistent with the pleadings in either one or both of the application and response in this regard.

16. Matters discussed at meetings of the Vice-Chair group are considered by the participants to be done within the confines of the oath of office prescribed in section 110(8) of the Act. The oath which has been taken by myself and all other members of the Board, obliges a deponent to keep certain information obtained as a member of the Board, confidential. Aside from the disclosures contained in paragraph 15 above, I consider any other particulars of the discussions within the Vice-Chair Group as falling within the confines of the oath of office. For that reason, I will disclose nothing further concerning these conversations.

17. I am not unmindful of the concerns that may be raised by parties in light of my disclosures. Some of these concerns were touched upon during the hearing on November 13, 1996. They include my eligibility as a potential witness as well as my ability to impartially assess any evidence that may be brought before me dealing with the manner in which Vice-Chairs of the Board were selected for the revocation of Orders in Council. It is also the case that, in this regard, I am situated in the same position as the Chair, the Alternate Chair and all other Vice-Chairs of the Board.

• • •

17. Following the oral ruling on November 14, 1996, the respondents moved that as a result of the information disclosed in paragraph 15 of that decision (the “disclosures”), neither I, nor the Chair, Alternate Chair or any other Vice-Chair of the Board could proceed with this matter. In the respondents’ view, the disclosures raised a reasonable apprehension of bias on the part of any adjudicator of the Board.

18. The applicant and intervenors argued that the disclosures did not raise an apprehension of bias and that the matter should proceed.

II

Submissions of the respondents

19. The respondents suggested that there were two issues that had to be determined to dispose of their motion. Firstly, what is the standard to which the Board should be held on an apprehension of bias? Secondly, having determined what the standard is, what exactly is the test to be applied within that standard?

20. On the first issue, the respondents argued that the Board should be held to the same strict standards that apply to the courts. Relying on the decision of the Supreme Court of Canada in *Newfoundland Telephone Company Limited v. The Board of Commissioners of Public Utilities*, [1991] 1 S.C.R. 623, the respondents observed that the standard to which any administrative tribunal will be held will vary with the nature of its statutory obligations and powers. Where, as in the Board’s case, much of the tribunal’s role is adjudicative rather than administrative, natural justice “expectations” will be high. The respondent also proposed that the nature of a tribunal’s “subject matter” may also have a bearing on the the standard which may be required.

21. In dealing specifically with the “subject matter”, the respondent referred the Board to the provisions of section 2 of the Act, entitled “Purposes and Application of Act”. Those provisions are as follows:

2. The following are the purposes of the Act:

1. to facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees.

2. to recognize the importance of workplace parties adapting to change.
3. to promote flexibility, productivity and employee involvement in the workplace.
4. to encourage communication between employers and employees in the workplace.
5. to recognize the importance of economic growth as the foundation for mutually beneficial relations amongst employers, employees and trade unions.
6. to encourage co-operative participation of employers and trade unions in resolving workplace issues.
7. to promote the expeditious resolution of workplace disputes.

22. Having regard to these provisions of the Act, the respondents emphasized the significant authority exercised by the Board over both individual and collective rights. The respondents pointed to the Board's responsibilities in governing labour relations in the province, the extent of its remedial powers and the protection of a privative clause. In these circumstances, it was suggested that the Board had to be held to the highest standard of natural justice on issues of bias.

23. On the specific test to be applied to determine whether there was a reasonable apprehension of bias, the respondents also relied on *Newfoundland Telephone Company Limited*, **supra**. In their submission, the test to be applied was whether a reasonable, well-informed bystander would in all the circumstances, perceive bias on the part of an adjudicator.

24. The respondents relied on the following facts as ones which would raise an apprehension of bias:

- (i) uncertainty about the content of the information provided to Vice-Chairs;
- (ii) the information was likely to be highly relevant to one of the the key factual disputes between the parties and inconsistent with either one or both of the pleadings;
- (iii) given the circumstances in which the information was provided, it is very likely to be perceived by Vice-Chairs as extremely reliable and probative with respect to the factual disputes between the parties;
- (iv) as the information concerned every Vice-Chair as a potential candidate to be removed from office, Vice-Chairs would be perceived to have a direct interest in how this information is characterized here and elsewhere.

25. Having regard to these observations, the respondents argued that a reasonable bystander would apprehend bias on the part of any adjudicator at the Board, in dealing with this matter.

26. The respondents submitted that, even if they consented to have the matter proceed in these circumstances, which they do not, the doctrine of waiver would have no application. It was suggested that a party could not waive bias where information disclosed by an adjudicator was uncertain or ambiguous.

27. The respondents submitted that an apprehension of bias renders any further decision void. Referring again to *Newfoundland Telephone Company Limited*, **supra**, the respondents argued that an apprehension of bias could not be cured by any subsequent decision of the tribunal.

28. The respondents conceded that if the Board did not hear the matter, there was some degree of uncertainty as to whether the courts would be able to adjudicate these applications in their entirety.

Submissions of the applicant and intervenors

29. The applicant and intervenors took no position on either the standard to which the Board should be held, or the test to be applied. Their submissions focused on the particular facts of the disclosure by the Board.

30. In the view of the applicant and intervenors, the following observations would lead to a conclusion that there should be no apprehension of bias:

- (i) Vice-Chairs were not involved in the decision making process which led to the removal of Vice-Chairs;
- (ii) what actually occurred may in fact be different from the information provided to Vice-Chairs;
- (iii) nothing in the information disclosed indicated that anything had been pre-judged;
- (iv) “collegial discussions” amongst Vice-Chairs of the Board have been accepted by the courts as appropriate and valuable in the Board’s process (see *Consolidated Bathurst Packaging Ltd. and International Woodworkers of America, Local 2-69 et al.* (1990), 68 D.L.R. (4th) 524, (S.C.C.)).

31. The applicant and intervenors relied on the case of *Canada (Minister of Citizenship and Immigration) v. Tobiass*, (unreported) July 4, 1996 (Federal Court of Canada) (Trial Division) Court Files Nos. T-569-95, T-866-95, T-938-95. In this case, a Judge of the Federal Court Trial Division determined that the conduct of the Chief Justice of the Federal Court, led in part to a reasonable apprehension of bias which required the proceedings to be stayed. It was argued that this case stood for the proposition that there is nothing inappropriate about an adjudicator judging the conduct of his or her colleagues.

32. Finally, the applicant and intervenors suggested that if the case could not proceed before the Board, then there was no certainty that issues of tremendous importance to the labour relations community raised by this matter would be resolved. Although no jurisprudence was relied upon for this proposition, the argument was that a strict application of procedural rights (natural justice concerns) might defeat the applicant’s substantive rights under the Act.

III

33. The four issues that must be determined are the following:

- (i) What is the standard of natural justice that should be applied to the Board in determining whether a reasonable apprehension of bias exists?

- (ii) Having answered the first question, what, precisely, is the formulation of the test?
- (iii) Having regard to the answers in questions (i) and (ii) above, is there a reasonable apprehension of bias in this matter as a result of the Board's disclosures of November 14, 1996?
- (iv) If the answer to question (iii) above is in the affirmative, should the Board proceed in any event, if the applicant has no other forum in which to raise the issues framed in this matter?

What is the standard of natural justice to be applied?

34. There is no doubt that the principles of natural justice apply to the Board and must govern its process. In *Consolidated Bathurst*, **supra**, Gonthier J. speaking for the majority of the Court at page 553 observed that there are two important and distinct rules of natural justice. Firstly, that an adjudicator be disinterested and unbiased (**nemo iudex in causa sua**). Secondly, that parties be given adequate notice and opportunity to be heard by the person who decides (**audi alteram partem**). In *Consolidated Bathurst*, **supra**, the Court ultimately decided that the core issue turned on an application of the second of the two rules. At page 567, Gonthier J. found that the "full Board" meeting process did not run afoul of the **audi alteram partem** rule. Here the issue falls squarely within the first of the two rules.

35. In applying the rules of natural justice, it has been recognized that allowances must be made for the institutional constraints placed upon tribunals. In *Kane v. Board of Governors of the University of British Columbia* (1980), 110 D.L.R. (3d) 311 (S.C.C.) at p. 322, Dickson J. (as he then was) described the way in which natural justice principles should be applied to administrative tribunals:

In any particular case, the requirements of natural justice will depend on "the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter being dealt with, and so forth": per Tucker, L. J. in *Russell v. Duke of Norfolk et al.*, [1949] 1 All E. R. 109 at 118. To abrogate the rules of natural justice, express language or necessary implication must be found in the statutory instrument....

36. The Court's formulation in *Kane*, **supra**, has been consistently relied upon and applied through to the present (see *Consolidated Bathurst*, **supra**, *Matsqui Indian Band v. Canadian Pacific Ltd.* (1995) 122 D.L.R. (4th) 129, (S.C.C.), and most recently *The Attorney General of Quebec and La Regie des alcools, des courses et des jeux v. 2747-3174 Quebec Inc.* unreported decision (S.C.C. File No. 24309), Judgement rendered November 21, 1996).

37. In *Consolidated Bathurst*, **supra**, at page 558, the Court posed the following question in determining the "natural justice standard" against which a particular practice (in that case the "full Board" meeting) should be measured:

The question before this court is whether the disadvantages involved in this practice are sufficiently important to warrant a holding that it constitutes a breach of the rules of natural justice...

In that case, the question was answered by weighing the advantages of the practice against the disadvantages.

38. In my view, the same type of analysis which requires a weighing of the respective advantages and disadvantages of the process should be applied here.

39. The respondents suggest that the highest standard of natural justice must apply to the Board on issues of bias. In support of this proposition, they rely on the "Purposes and Application" provisions

of section 2 of the Act. In so relying, the respondents invite an analysis of the Board's statutory responsibilities and the extent to which they are dependent upon an absence of perceived bias.

40. As the respondents point out, the Board is charged with the responsibility of supervising labour relations in the province. This requires the Board to make decisions with significant consequences for commercial, individual and collective rights. The Board's decisions are protected by a privative clause. Judicial deference to the Board's particular expertise is well entrenched in the jurisprudence. For most purposes, the Board's decision of an issue is the final one. These factors alone in my view would require a strict standard against which to measure perceptions of bias.

41. There is also a very real sense in which the nature of the Board's subject matter demands that parties are able to hold the Board to a high standard of neutrality. The statutory scheme set out in the Act assumes that, on one level, the interests of management and labour are explicitly in conflict. This assumption lies at the heart of notions of inclusion or exclusion, whether a person is an employee for purposes of the Act, or alternatively, excluded from collective bargaining because his or her interests lie with management. The scheme of the Act anticipates that these parties whose interests are in conflict, will live with each other in long term relationships.

42. The legislation provides necessarily for a neutral third party in the person of the Board or, in some cases, as arbitrators. The neutral's job is to enforce and supervise the long term "management and labour" relationships that are inherently characterized by a degree of unavoidable conflict. The job cannot be done if one or both parties apprehend that the neutral is partial, or "interested" in the way in which the relationship is managed or supervised. Without the parties' trust in its "lack of bias", the neutral will fail in its responsibilities. If this happens, the statutory scheme will not work. Parties may in this case, look beyond the statute for other means by which to influence and pressure each other.

43. On this analysis, the advantages of holding the Board to a high standard, as the respondents suggest, are obvious. What of the disadvantages? The immediately apparent one is that the application of this standard requires a declaration of potential conflicts between adjudicators and parties on a broad scale. The circle of proscribed knowledge or relationships, is drawn larger rather than smaller. It is unlikely, however, that this apparent disadvantage has in the past, or will in the future, prevent the Board from doing its job.

44. Having regard to these considerations, I accept the respondents' submission that, on issues of bias and its perception, the Board should be held to a high standard.

What is the test for apprehension of bias?

45. The respondents rely on the formulation of this test as described in *Newfoundland Telephone Company Limited*, **supra**. The test was restated in *Matsqui*, **supra**, at page 158 as follows:

The classic test for a reasonable apprehension of bias is that stated by de Grandpré J. in *Committee for Justice and Liberty v. Canada (National Energy Board)* (1976), 68 D.L.R. (3d) 716 at p. 735, [1978] 1 S.C.R. 369, 9 N.R. 115:

... the apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal [at p. 667], that test is "what would an informed person, viewing the matter realistically and practically and having thought the matter through conclude. Would he think that it is more likely than not that Mr. Crowe whether consciously or unconsciously, would not decide fairly?"

De Grandpré J. further held that the grounds for the apprehension must be "substantial".

46. The test proposed by the respondent is consistent with the well developed jurisprudence on this point. I would apply it in this case.

Is there a reasonable apprehension of bias?

47. Having determined the standard of natural justice which should apply in the facts of this case, and the formulation of the question to be posed in deciding the issue of an apprehension of bias, I now turn to what I view as the salient facts.

48. One of the factual issues hotly contested by the parties is the role of the Chair of the Board in deciding which four of the Board's Vice-Chairs would be subject to removal from office. The parties have been told that information regarding the selection process was provided to Vice-Chairs at a confidential meeting where the Chair was in attendance. The parties have not been told who reported the information, what its content was or how reliable it was perceived to be by the group of Vice-Chairs. All potential adjudicators at the Board would be in possession of this information. The parties have been told that the information is inconsistent with either one or both of the pleadings.

49. The applicant and intervenors suggest that on these facts it would be reasonable to conclude that the information in the possession of Vice-Chairs is no different from what might be gleaned from a newspaper. I cannot agree. It is clear that, although Vice-Chairs were not involved in the decision making process, they were given information concerning the process in the presence of one of the persons who is alleged to have made the decisions. It is reasonable to assume in these circumstances, whether or not it is in fact true, that the information provided would be understood by Vice-Chairs to be reliable and probative to the issues in dispute in this matter.

50. The degree of uncertainty as to the content of the information coupled with the knowledge that it is inconsistent with one or both pleadings, also leads in my view to a reasonable apprehension of bias. These considerations, in tandem with a perception that Vice-Chairs may have a direct and personal interest in the way in which the provided information may be characterized after the fact, leads me to the conclusion that there is undoubtedly a reasonable basis for an apprehension of bias.

51. To summarize, I would find the following facts to be determinative of this issue:

- (i) the provided information is relevant to one of the key factual disputes between the parties and inconsistent with one or both pleadings;
- (ii) The information is reasonably perceived to be understood by Vice-Chairs as highly probative;
- (iii) the content and source of the information is undisclosed;
- (iv) all Board adjudicators may reasonably be perceived as having an interest in the characterization of the information provided.

52. In my view, having regard to these findings, a reasonable person, well informed and after appropriate consideration, would have a reasonable apprehension of the Board's bias, because of the disclosures of November 14, 1996.

Should the Board proceed in any event?

53. The applicant has asserted that if the Board does not proceed, then it may not get a hearing of its issues anywhere. No proposition of law or authority was relied upon for the assertion that the Board could proceed in the face of a reasonable apprehension of bias.

54. I am aware of the decision of the Divisional Court in *E.A. Manning Limited et al., and Ontario Securities Commission* (1994), 18 O.R. (3d) 97, where the Court dealt with the application of the “doctrine of necessity”. Arguably, this doctrine may bear some similarity to the applicant’s request on this point. In any event, even if it were to have been argued, in my view it would not be applicable in the circumstances of this case. There is no certainty that the issues raised by the applicant may not be dealt with in another forum (see, for example, section 16 of the *Public Officers Act* R.S.O. 1990, c. P. 45 as amended, and which was discussed at the hearing on November 14, 1996).

IV

55. The parties have in various ways, suggested that if the matter cannot proceed any further before the Board, then it may be possible to compile some form of record upon which judicial proceedings may be based. The concern here is that there be a base of historical or institutional fact and comment which will provide a context for the handling of any further litigation in the courts. The parties have indicated a willingness to permit the Board to do this, but reserve their rights to challenge such a narrative.

56. In circumstances where I have found that there exists a reasonable apprehension of bias, it would not be appropriate for the Board to continue on and make observations of fact or draw conclusions of law.

57. Accordingly, I declare that a reasonable apprehension of bias exists in this matter as a result of the disclosures made by the Board in its decision of November 14, 1996. The proceedings before the Board in Board File No. 2259-96-U are hereby stayed.

58. The parties did not address the issue of how the application in Board File No. 0656-96-U should proceed if the application in Board File No. 2259-96-U was to be stayed. Given the tangible labour relations issues that require adjudication in Board File No. 0656-96-U, I would invite the parties to make written submissions on how that matter should proceed. The parties are directed to file their submissions with each other and the Board within ten days of the date of this decision.

2137-96-R; 2371-96-R Practical Nurses Federation of Ontario, Applicant v. **Saint Elizabeth Health Care - Durham Region**, Responding Party v. Ontario Nurses’ Association, Intervenor; Ontario Nurses’ Association, Applicant v. **Saint Elizabeth Health Care - Durham Region**, Responding Party v. Practical Nurses Federation of Ontario, Intervenor

Bargaining Unit - Certification - Board directing representation vote in voting constituency after considering bargaining unit descriptions proposed by union in its application and by employer in its response - Following vote direction, employer seeking to change its position on appropriate bargaining unit and proposing a larger unit - Board declining to change vote direction and leaving issue of appropriate bargaining unit to be determined at hearing following vote - Eleven of twelve ballots cast in favour of union representation - Board ruling that employer bound by bargaining unit described in its response

BEFORE: *Gail Misra*, Vice-Chair, and Board Members *J. A. Ronson* and *D. A. Patterson*.

APPEARANCES: *Denis W. Ellickson* and *William Sly* for Practical Nurses Federation of Ontario; *Nancy Hawkes*, *Peter Israel* and *C. Andree* for Saint Elizabeth Health Care - Durham Region; *Risa Pancer* and *Jim Fraser* for Ontario Nurses' Association.

DECISION OF VICE-CHAIR GAIL MISRA AND BOARD MEMBER D. A. PATTERSON;
December 5, 1996

1. Board File No. 2137-96-R is an application for certification, filed on October 22, 1996, wherein the Practical Nurses Federation of Ontario (the "Federation") has applied to represent all Registered and Graduate practical nurses (referred to together as "RPN's") employed in a nursing capacity by Saint Elizabeth Health Care - Durham Region ("St. Elizabeth Health Care"), save and except supervisors, persons above the rank of supervisors, and office and clerical staff. Board File No. 2371-96-R is an application for certification filed on November 7, 1996 by the Ontario Nurses Association ("ONA") wherein that union seeks to represent all employees of St. Elizabeth Health Care, except for Program Directors, persons above the rank of Program Director, Registered practical nurses, Graduate practical nurses, and homemakers.
2. At the outset of the hearing ONA requested and was granted leave to intervene in Board File No. 2137-96-R. ONA is therefore added to the style of cause to reflect its intervenor status.
3. Counsel for the responding party requested that the Board consolidate the two certification files as he felt it made no sense to have to go ahead with each of the applications separately. ONA was prepared to have the two matters joined. Counsel for the Federation however took a different position as he was of the view there were no issues in dispute between the responding party and the Federation, so there was no purpose served by consolidating the files.
4. After considering the parties' submissions, the Board ruled orally that it would hear the two applications together.
5. Counsel for the Federation then made his preliminary motion that St. Elizabeth Health Care should not be permitted to resile from its response filed in Board File No. 2137-96-R, and to change the bargaining unit description to what it had outlined in its letter to the Board of October 29, 1996.
6. The basic facts concerning this matter are not in dispute. On October 22, 1996 the Federation filed an application for certification to represent the RPN's and delivered to the responding party a copy of the application, the Board's Rules of Procedure, and the requisite forms. On October 24, 1996 a response was filed on behalf of St. Elizabeth Health Care indicating it believed the appropriate bargaining unit would consist of all Registered practical nurses and graduate practical nurses employed in a visiting and shift nursing capacity, save and except Supervisors, persons above the rank of Supervisors, office and clerical staff. While the Federation believed there were 15 persons in its proposed bargaining unit, the responding party believed there were 17 persons in its respective bargaining unit.
7. By a decision dated October 28, 1996 the Board (panel somewhat differently constituted) ordered a vote be held in a voting constituency which mirrored the bargaining unit proposed by the applicant Federation. The Board noted that there was a dispute about "whether or not employees who would otherwise fall within the voting constituency described" but who did not work in a "visiting" or "shift" capacity should be included in the bargaining unit. The Board directed that any individual falling into those categories who wished to vote should be entitled to cast a ballot. Thus, any employee who may have come within the responding party's proposed bargaining unit would also have had an opportunity to cast a ballot. The vote was to be held on October 30, 1996.

8. On October 29, 1996 the Board received correspondence from the responding party indicating it had changed its position and was now seeking a unit composed of *all employees* employed in a nursing capacity, save and except supervisors, persons above the rank of supervisors, office and clerical staff. The Board (a second panel, somewhat differently constituted) issued a decision noting that the responding party was now seeking to expand its proposed bargaining unit. The Board indicated that the vote arrangements had already been made and that given the time at which the request was being made, and the nature of the requested change, the vote was to proceed as directed. The issue of the new proposed bargaining unit was to be dealt with at a hearing following the vote.

9. On October 30, 1996 the vote was held. Twelve employees voted, and of those who voted, 11 voted in favour of the Federation.

10. It is argued by the Federation that, after filing its response in a timely fashion, the responding party should not be permitted to change its position so fundamentally. Relying on section 7(14) of the *Labour Relations Act, 1995*, and Rule 43v of the Board's Rules of Procedure, the Federation argues that an employer is not required to file a response to a union's proposed bargaining unit description. However, if it chooses to do so, it is argued on the basis of the legislative provision and the rule, then it "shall" do so within two days after the day on which the employer receives the application for certification. The Federation contends that the responding party to this application filed its response in a timely fashion, the Board considered that response, and the Board ordered the vote. It was only *after* that point that the responding party was seeking to change its position and requesting an "all employee" unit.

11. The Federation argues that one of the express purposes of the Act is expeditious resolution of labour relations matters, and to that end the Act provides for fast mandatory votes in certification applications. It is suggested that the most reliable vote results are those found in votes taken close to the date of application for certification. To allow employers to resile from their responses and to fundamentally change bargaining unit descriptions is to open the whole vote process to abuse and to allow employers to delay the process. The Federation argues this is extremely prejudicial to the employees who may be required to participate in two votes by the end of the certification process. The Federation notes that in this case the employees of this employer have already voted twice, in the Federation vote and in the ONA vote, and may therefore have to participate in a third vote at the end of the process if the employer is successful in all of its arguments. If the Board finds for the union on this issue, the Federation argued there would be no dispute over the appropriateness of the bargaining unit, except to agree on the precise wording of the bargaining unit description.

12. St. Elizabeth Health Care argued that the Board should not become lost in the form issues, but should decide what the appropriate bargaining unit is in this case. It was conceded that St. Elizabeth Health Care did file a response to the application within the two day time limit, and did indicate the bargaining unit description it believed was appropriate. However, it is argued that the responding party did not focus itself properly on the issue when the application was received. It is contended that once counsel was consulted, then the Federation and, subsequently, the Board were contacted with the bargaining unit description which was believed to be appropriate.

13. The responding party asks the Board to rely on section 123 of the Act to relieve against what is characterized as a technical defect, or a defect of form. It is argued that there is no prejudice to the Federation because if the Board decides some other bargaining unit would be more appropriate, that will be a Board decision, and so cannot be seen as a prejudicial effect flowing from the responding party's change of position. Finally, the responding party argues it simply wants its employees to be represented by whoever they want.

14. The Federation argued in response that section 7(14) is a mandatory provision of the Act, and it is not open to the Board to relieve against the violation of that express provision. In any event, it is argued, the responding party has provided the Board with no good reason to exercise its discretion in this case. The Federation suggests it is disingenuous for the responding party to argue that it would be the Board which would be ordering a new vote, because *but for* the responding party's decision to change the bargaining unit description after the response date, this issue would not now be argued. The vote results, in both the Federation application and in the ONA application have indicated who the employees wish to have represent them, and the Federation argues that the responding party is seeking to override the choices of the employees.

DECISION

15. The Board considered the submissions of the parties and gave an oral ruling, with reasons to follow. With Board Member Ronson dissenting, the majority was of the view that the responding party was bound by the bargaining unit as described in the response it had filed. The parties subsequently requested some clarification from the Board regarding its ruling. It was explained that the majority ruling meant that, as a practical matter, so long as the responding party and the Federation could agree on the precise wording of the bargaining unit description, based on the application and the original response, a certificate would issue to the Federation in respect of the Registered and Graduate practical nurses. The issues remaining to be heard would be with respect to the ONA application.

16. It became apparent at this stage of the proceeding that the responding party had believed that the Board had consolidated the hearing of the two applications, and was therefore going to decide on a global basis what bargaining unit, and presumably which bargaining agent, would be appropriate overall. It is unclear why the responding party would have been of this view since the Board specifically indicated it would be "hearing these matters together", and made no mention of consolidation. In any event, even if the Board had made the ruling to consolidate the two applications, it would nonetheless have had to decide this very issue. The Federation application for certification was first in time before the Board. The vote in that case had been held before the ONA application had even been filed. The ONA application specifically excluded the RPN's from the bargaining unit which that union was seeking. It is difficult to see how the Board could have taken the jurisdiction to decide which of the two unions would be most appropriate in these circumstances. Nothing in the initial submissions of the parties regarding consolidation suggested that either union was prepared to have the Board decide *which of them* could represent some bargaining unit which the Board would decide was appropriate.

17. For ease of reference in giving the reasons for our decision on the issue of the responding party's change of bargaining unit description, the relevant sections of the Act are outlined below:

7. (12) The application for certification shall include a written description of the proposed bargaining unit including an estimate of the number of individuals in the unit.

• • •

(14) If the employer disagrees with the description of the proposed bargaining unit, the employer may give the Board a written description of the bargaining unit that the employer proposes and shall do so within two days (excluding Saturdays, Sundays and holidays) after the day on which the employer receives the application for certification.

* * *

8. (1) Upon receiving an application for certification, the Board may determine the voting constituency to be used for a representation vote and in doing so shall take into account,

- (a) the description of the proposed bargaining unit included in the application for certification; and
- (b) the description, if any, of the bargaining unit that the employer proposes.

* * *

123. No proceeding under this Act is invalid by reason of any defect of form or any technical irregularity and no proceeding shall be quashed or set aside if no substantial wrong or miscarriage of justice has occurred.

18. In a recent decision of the Board, *The Corporation of the City of Toronto* (as yet unreported, Board File No. 2603-95-R, July 3, 1996) [now reported at [1996] OLRB Rep. Jul/Aug. 552], the majority of the panel in that case had the opportunity to outline the certification process of the Act, having regard to the amendments made pursuant to Bill 7. It was noted that the Legislature has created a new and different mechanism in certifications, relying on the very quick five day votes to measure employee wishes, while at the same time limiting the employer's opportunity to improperly interfere with the employees' freedom of choice (see paragraph 84). The majority stated that the new system made it clear that time was of the essence, and that it was not just a matter of having a vote in every case, but of having a quick vote in every case. At paragraph 92 the majority noted that sections 7(12) to 7(14) are designed to codify and simplify the record, so that the Board can act within the 5-day time limit prescribed. The decision goes on to state:

94. Section 7(14) contemplates that an employer *may* disagree with the union's proposed unit description. If it does disagree, the employer has only two days to provide the Board with its own written description of its proposed bargaining unit. No other kind of dispute is envisaged nor representation requested, and the employer must crystallize this kind of dispute very quickly.

95. We must reiterate at this point: section 7 does not mention any other kind of dispute or filing from the employer at this stage. Specifically, section 7 neither requires nor contemplates that an employer will file a list of employees in the union's proposed unit, or in its own proposed bargaining unit. All that the statute mentions is the bargaining unit description, and even that is optional.

19. In the case before us the responding party did choose to propose an alternate bargaining unit description in its response. The Board clearly considered both the application and the response in reaching the vote decision of October 28, 1996. It is also clear that another panel of the Board then considered the responding party's second submission, made after the filing deadline for the response and after the Board's vote decision had issued. The Board concluded that the vote arrangements had been made and the notices of the vote posted, and that it was not going to change the voting constituency. The Board noted in its decision that, in reaching its decision, it had had regard to the timing of the request to amend and to the nature of the change requested.

20. The majority of this panel of the Board is of the view that it would be prejudicial to the Federation to now embark upon a hearing about what the appropriate bargaining unit should be. If we were to do so, and find for the responding party, then a new vote would have to be held since the original vote decision did not include a larger voting constituency. Nor did the second decision of the Board, issued on October 29, 1996, enlarge the voting constituency.

21. On October 28, 1996 the Board ordered that the vote be held on October 30, 1996. The decision, along with a "Notice of Vote and of Hearing" was sent out that day to the parties. On October 29th, the Board received confirmation from the employer that the notice had been posted in the workplace. Hence, the employees had been informed of the time, place and purpose of the vote to be held on October 30, 1996. A Labour Relations Officer had also been assigned to travel to Little Current to hold the vote. All arrangements had therefore been made for the holding of a vote, based on the application and the response which had been filed. In accordance with the legislative framework, to

hold a vote in five days requires that the Board move quickly after the response is filed so that employees get the maximum amount of notice that a vote is about to be held in their workplace. At the point at which the employer submitted its new proposed bargaining unit, all arrangements had been made to facilitate the vote being held. It would have required further time and expense to have had to cancel the vote arrangements and to make new ones. For all of these reasons, the Board does not generally permit parties to resile from a position taken. In this case, there has been a vote held, and the passage of additional time.

22. The Federation has now missed its opportunity to attempt to gain support for itself (because in the interim ONA has applied for an all employee unit, and in the vote held in its application, ONA received the support of the majority of those who voted). The employees of this employer have already been exposed to two votes in the space of one month, and would be required to express their preferences yet again. It is to avoid a workplace being exposed to constant campaigning and the repeated testing of employee wishes that the one year bar is now statutorily imposed, and why the Board itself has the discretion to impose a bar in certain situations.

23. Counsel for the responding party suggested that St. Elizabeth Health Care had been unable to focus on the issue at that time, and it was suggested obliquely that it had been acting without legal counsel. As the Board has on numerous occasions stated, parties may participate in matters before the Board without the benefit of legal counsel, but they do so at their own risk. The Board is a quasi-judicial body and it cannot change the rules or the application of the statute simply because a party does not seek legal counsel in a timely fashion. We appreciate that the statute and the rules require parties to make quick decisions and submissions, however, that is so for all participants in matters before the Board. To have different application of the statute or the rules for an unrepresented party would be untenable in this system and would be contrary to the generally accepted rules of natural justice.

24. We are not persuaded that section 123 of the Act has application to the situation before us. There has been no defect of form or any technical irregularity in this case. Since we have noted that the response was filed in a timely fashion, and was relied upon by the Board, for the reasons already outlined above, it is now too late to consider the responding party's later amendment to the bargaining unit description without serious prejudice accruing to the Federation. In all of the circumstances of this case we therefore ruled orally that the responding party could not resile from the response filed on October 24, 1996.

THE FEDERATION CERTIFICATION APPLICATION - BOARD FILE NO. 2137-96-R

25. Following the issuance of the Board's oral ruling the Federation and the responding party agreed to a bargaining unit description. They agreed further that there were no other outstanding issues between them.

26. No statement of desire to make representations has been filed with the Board within the time fixed by the Board following the taking of the representation vote pursuant to the Board's direction of October 28, 1996.

27. Having regard to the agreement of the parties, the majority finds that:

all Registered Practical Nurses and Graduate Practical Nurses employed in a nursing capacity by Saint Elizabeth Health Care - Durham Region, in the Region of Durham, save and except supervisors, persons above the rank of supervisor, office and clerical staff,

constitute a unit of employees of the responding party appropriate for collective bargaining.

28. On the taking of the representation vote directed by the Board, more than fifty per cent of the ballots cast by the employees in the bargaining unit were cast in favour of the applicant.

29. A certificate will issue to the applicant.

30. The Registrar will destroy the ballots cast in the representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before the expiration of such 30-day period.

31. The responding party is directed to post copies of this decision immediately, adjacent to all copies of the "Notice of Vote and of Hearing" posted previously. These copies must remain posted for thirty days from the date of this decision.

DECISION OF BOARD MEMBER JAMES A. RONSON; December 5, 1996

1. To those who think that deciding on an appropriate bargaining unit will prejudice the Federation by depriving it of a positive vote, the majority decision will make eminent sense.

2. Others may wonder at the adversarial conflict so easily handed by the Board to the Employer which is certain to occur over "ownership of work" (sometimes referred to as a jurisdictional dispute). Hopefully the health of clients will not suffer in this fight as the employer seeks to discern between mongoose and cobra.

3. I would have ordered that the issues in this case (Board File 2137-96-R) be heard together with those in Board File 2371-96-R so as to strike an appropriate bargaining unit. That way, some practical labour relations object might have been achieved.

COURT PROCEEDINGS

3912-94-R; 3913-94-R (Court File No. 985/95) International Brotherhood of Electrical Workers, Local 586, Applicant v. Dare Personnel Inc. and 1092009 Ontario Inc. c.o.b. Personnel Force and Ontario Labour Relations Board, Respondents

Certification - Construction Industry - Employer - Judicial Review - Board finding that personnel agencies not the employers of electricians for whom union seeking bargaining rights - Certification applications dismissed - Union's application for judicial review dismissed by Divisional Court

Board decision reported at [1995] OLRB Rep. July 935.

Ontario Court of Justice (Divisional Court), Southey, Saunders and Chilcott JJ., November 26, 1996.

Southey J. (endorsement): There being no issue as to the standard of review, or as to the jurisdiction of the Board, we do not need to hear from Mr. Lebi.

Mr. Engelmann presented an able argument questioning the merits of the Board's decision, and that question has given us some concern.

We are not persuaded, however, that the Board made any incorrect findings of fact. Nor are we persuaded that the Board's conclusion was supported by only one of the factors mentioned in Mr. Engelmann's Factum in paragraph 27. In addition to the exercise of direction and control, which was undoubtedly the most important factor in the Board's decision, we think that consideration of the ultimate source of the funds for the remuneration of the workers, the power to impose discipline, and the power to bring about dismissal were also factors supporting the decision that the employment agencies were not the employer.

After careful consideration, we cannot find that the Board's decision was patently unreasonable or clearly irrational.

The application is dismissed.

4663-94-R (Court File No. 645/96) Gourmet Baker Inc., Applicant v. The United Steelworkers of America and the Ontario Labour Relations Board, Respondents

Certification - Employee - Judicial Review - Board finding that thirteen lead hands employed at employer's production facility exercising managerial functions and not "employees" for purposes of the Act - Certificate issuing - Employer seeking expedited judicial review of Board's decision before single judge - Court denying leave under section 6(2) of Judicial Review Procedure Act to have application heard by single judge - Application transferred to Divisional Court

Board decision not reported.

Ontario Court of Justice (General Division), Saunders J., November 19, 1996.

Saunders J. (orally): The applicant seeks judicial review of the decision of the Ontario Labour Relations Board certifying the respondent Union. The application is made under s. 6(2) of the *Judicial Review Procedure Act*. That section propounds two tests that must be satisfied before a single judge of the General Division can hear the application. It is clearly the intention of the legislature that most judicial review applications will be heard by a panel of three judges.

In this particular case, the application is in a state of perfection and could therefore be heard by the full Divisional Court in the middle of January 1997 which is less than two months away. The case is urgent in the sense that all processes involving collective bargaining have a degree of urgency. The pending judicial review application admittedly does create some difficulty to the parties in the performance of their statutory obligations. This would be the situation in every case in which a certification had been made by the Board, and either party sought judicial review. While there may be difficulties they do not appear to me, looking at the material, to be insurmountable. There is the possibility of a strike or a lockout, but neither party is in a position to take that action. Several things have to happen before there are in a position to do so.

The circumstances as they exist at the moment do not amount, in my opinion, to a situation when a delay in hearing the application by the Divisional Court is likely to involve a failure of justice. If the circumstances change either party can reapply to the court. The record is endorsed: For reasons dictated, leave under s.6(2) of the *Judicial Review Procedure Act* is refused. The application is transferred to the Divisional Court. Costs reserved to the Panel.

2214-94-U; 2215-94-U (Court File Nos. 655/95 & 551/95) Labourers' International Union of North America, and Labourers' International Union of North America, Ontario Provincial District Council, and Sheet Metal Workers' International Association and Ontario Sheet Metal Workers' & Roofers Conference and the Built-Up Roofers', Damp and Waterproofers' Section of the Sheet Metal Workers' Conference, Applicants v. **Ontario Construction Secretariat** and Ontario Labour Relations Board

Charter of Rights and Freedoms - Constitutional Law - Construction Industry - Judicial Review - Ontario Construction Secretariat bringing complaint against Labourers' union and Sheet Metal Workers' union for failure to remit payments to it contrary to section 155 of the Act - Responding unions asserting that section 155 of the Act and O.Reg. 187/93 unconstitutional and ought not to be enforced by the Board - Board finding amendment to *Labour Relations Act* and regulation made thereunder creating Ontario Construction Secretariat constitutionally within authority of province - Application for judicial review dismissed by Divisional Court

Board decision reported at [1995] OLRB Rep. May 655.

Ontario Court of Justice (Divisional Court), Hartt, Steele and Watt JJ., November 21, 1996.

Watt J.: By order of a single judge, these two applications for judicial review, which are based on a common factual predicate, raise common issues and seek equivalent relief, were heard together. They arise out of a decision of the Ontario Labour Relations Board (the "Board") which dismissed constitutional challenges to s. 155 of the *Labour Relations Act*, R.S.O. 1990, c. L. 2 (the "Act") and O. Reg. 187/93 (the "Regulation"). The challenges were asserted as matters preliminary to an application by the Ontario Construction Secretariat (the "Secretariat") to the Board for an order directing the applicant Unions to pay the amounts owing under s. 5 of the *Regulation*.

1. The Legislative Scheme

Section 155, added to the *Act* in 1991, provides for the creation of a corporation, to be established by regulation, to achieve certain objects. Section 155(2) provides as follows:

- 155.(2) The objects of the corporation are to facilitate collective bargaining in, and otherwise assist, the industrial, commercial and institutional sector of the construction industry including
- (a) collecting, analyzing and disseminating information concerning collective bargaining and economic conditions in the industrial, commercial and institutional sector of the construction industry;
 - (b) holding conferences involving representatives of the employer bargaining agencies and the employee bargaining agencies; and
 - (c) carrying out such additional objects as are prescribed.

By s. 155(3), the corporation *is not* an agency of the Crown. Its members consist of equal numbers of representatives of labour, management and the Government of Ontario. Under s. 155(6), the employer and employee bargaining agencies are required to make payments to the corporation in accordance with the regulations.

It is s. 155(8) of the *Act* which authorizes the Lieutenant Governor in Council to make regulations, *inter alia*,

• • •

- (c) governing the payments to be made to the corporation by the employer bargaining agencies and the employee bargaining agencies including prescribing methods for determining the payments.

Section 155 of the *Act*, as amended by S.O. 1991, c. 56, s. 4, has been re-enacted as s. 168 of the *Labour Relations Act*, 1995, S.O. 1995, c. 1 Schedule A. There are no changes material to the determination or disposition of these applications.

Under s. 1(1) of the *Regulation*, 187/93, the “corporation” for which provision is made in s. 155 of the *Act*, is the Secretariat. Its objects include the advancement of the unionized construction industry in Ontario, as well the objects articulated in s. 155(2) of the *Act*. The members of the Secretariat are appointed by the Minister of Labour. Only the members representing labour (the employee bargaining agencies) and management (the employer bargaining agencies) are entitled to vote.

Section 5 of the *Regulation* governs payments which the employee and employer bargaining agencies are required to make to the Secretariat. It provides:

- 5.-
- (1) This section governs the payments that the employer bargaining agencies and the employee bargaining agencies are required, under subsection 152(6) of the *Act*, to make to the Secretariat.
 - (2) Payments must be made by the employer bargaining agencies and employee bargaining agencies designated by the Minister under subsection 141(1) of the *Act*.
 - (3) Payments are due on the 15th day of each month. The first payments are not due until the 15th day of September, 1993.
 - (4) The payment that an employee bargaining agency must make is equal to one cent for each hour described in subsection (6) earned by an employee represented by a bargaining agent that is part of the employee bargaining agency.
 - (5) The payment that an employer bargaining agency must make is equal to one cent for each hour described in subsection (6) earned by an employee of an employer represented in bargaining by the employer bargaining agency.
 - (6) The hours referred to in subsection (4) and (5) are hours earned in Ontario in the industrial, commercial and institutional sector of the construction industry in the third calendar month preceding the day the payment is due. O. Re. 187/93, s. 5.

The *Regulation* came into effect on June 1, 1993.

2. The Taxation Issue

It is the position of the applicants that the enactment of s. 155 of the *Act* and the *Regulation*, in particular s. 155(6) of the *Act* and ss. 5(4) and (5) of the *Regulation*, are *ultra vires* the legislature of the province, in that they constitute indirect taxation, a matter reserved exclusively to Parliament under class 3 of s. 91 of the *Constitution Act*, 1867.

The Board began its task of determining the *vires* of the impugned legislation by identifying the “matter” of the law, then assigning it to a class of subject in respect of which the province has legislative authority. The Board held as follows:

19. ... When one views the history leading up to the legislation and the regulation, including

the Adams Report, the detailed participation of the affected trades and employers, the previous legislative regime dealing with the I.C.I. in the province, and the activities of the affected players subsequent to the passing of the regulation, it is apparent that the legislation and regulation were both designed to and do in fact deal with the regulation of labour relations in the province. This is a subject matter constitutionally within the authority of the province.

Once having determined that the legislation was properly characterized as an enactment which regulated labour relations within the province, the Board considered whether the fees required to be paid under the Regulation constituted a tax, direct or indirect, or an administrative fee levied for provincial labour relations purposes. The essence of the Board's reasoning on this issue appears in the following paragraphs:

25. In these circumstances, we do not conclude that the Secretariat itself, or the sums required to be paid to it pursuant to the regulation, are unconstitutional. Those sums are collected only for purposes of the Secretariat, in order to enable the Secretariat to conduct its business and fulfil *[sic]* its objectives. In our view, this scheme is one involving the administration and collection of administrative levies required to fund the agency, an agency which properly falls within provincial jurisdiction. As such, these fees are not in the nature of a tax.

26. More particularly, we accept as appropriate the approach adopted by the Supreme Court of Canada in *Allard Contractors Ltd. v. Coquitlam (District)* [1993], 4 S.C.R. 371. In that case the Supreme Court of Canada unanimously upheld the constitutionality of certain municipal by-laws imposing fees for gravel extraction. In so doing, the Court concluded that the appropriate test for the determination of what constitutes a valid regulatory charge, rather than taxation, was whether the variable fees could be 'supported as ancillary or adhesive to a valid provincial regulatory scheme?'

• • •

27. There is no doubt that the income already generated for the Secretariat by the regulation, by those employer and employee bargaining agencies that have been remitting the required funds, far exceeds its current costs and obligations. However, this fact is not determinative of the constitutional issue before us. First, there will not doubt be start-up costs of any organization like this agency, costs which are extremely difficult, if not impossible, to predict accurately before the organization has become established. Second, even though the amounts collected far exceed the costs incurred, there was nevertheless an attempt by the government to estimate the appropriate level of payments. The government made this attempt by asking the trades and the employers directly affected by the agency to themselves estimate what the appropriate fee level ought to be, and what the appropriate method of collection of those fees ought to be. Whether or not the estimate so reached by the participant labour organizations was wildly excessive or completely accurate, we are satisfied that the government made a reasonable attempt to estimate levels of payments that would reflect the need of the new agency. It did so in a manner difficult to criticize: it asked the parties directly affected and working in the industry to utilize their joint and individual expertise to advise the government as to the appropriate level of payment. And then it followed their joint recommendation.

28. Apart from the specific level of the fees, we are satisfied that the fee concept can be fully supported as ancillary to or adhesive to the provincial regulatory scheme in question. The Secretariat is a creature of this new legislation and regulation, and as such needs a funding base in order to accomplish its valid provincial objectives. We see nothing unconstitutional in the conclusion of the government that the fees ought to be borne by the communities directly affected by the Secretariat's activities.

In our respectful view, the Board properly identified the "matter" of the law and correctly assigned it to a class of subject reserved for the provincial legislature.

The proper characterization of the impugned legislation, in our respectful view, is *not* taxation. It is, rather, legislation in relation to property and civil rights, and matters of purely local or private nature within the province. It falls within the legislative competence of the province under classes 13 and 16

of s. 92 of the *Constitution Act*, 1867. The pith and substance of s. 155 of the *Act*, as well the *Regulation*, is the promotion of labour relations within the construction industry in the province.

“Labour relations” is *not* an enumerated class of subject in either s. 91 or s. 92 of the *Constitution Act*, 1867. It has been held, however, that exclusive provincial legislative competence is the rule, except with respect to federally-regulated enterprises. See, for example, *Northern Telecom Ltd. v. Communications Workers of Canada*, [1980] 1 S.C.R. 115, 131-2, per Dickson J.

The *Labour Relations Act*, 1995, as well its predecessors, regulates labour relations within the province. Part of the *Act* regulates labour relations in the construction industry. The part provides for single-trade province-wide collective bargaining. Collective agreements may only be negotiated between designated or certified employer bargaining agencies and designated or accredited employee bargaining agencies. Designated bargaining agencies receive exclusive jurisdiction to negotiate for a specific trade or craft throughout the province. Collective agreements are for an equivalent term and have a common expiry date.

Section 155 of the *Act* and the *Regulation* are integral components of the part of the *Act* which deals with the construction industry. The objects of the Secretariat, the corporation established by regulation, are to

- i facilitate collective bargaining in the industrial, commercial and institutional sector of the construction industry;
- ii otherwise assist the industrial, commercial and institutional sector of the construction; and,
- iii advance the unionized construction industry in Ontario.

The objects of the Secretariat include the collection, analysis and dissemination of information concerning collective bargaining and economic conditions in the industrial, commercial and institutional sector of the construction industry and holding conferences involving representatives of employer and employee bargaining agencies.

It is common ground that, compulsory funding requirements set to one side, the creation of the Secretariat is a constitutionally admissible act of the provincial legislature. It would seem logically to follow that, unless the fact, nature or extent of the charges required to be paid to fund the Secretariat compel a different result, the impugned legislation is *not ultra vires* the provincial legislature.

The essence of taxation is the raising of revenue for the purposes of the enacting legislative authority, here the province of Ontario. It is patent that the fees at issue are not intended to, nor can they produce or generate revenue for provincial purposes. The fees are *not* paid to the province. They do *not* become part of the consolidated revenue fund of the province. They are *not* paid to any Crown agency. By statute, the Secretariat, the recipient of the funds, is *not* an agency of the Crown. The only members of the Board of Directors who may vote, hence determine the manner and extent to which the funds will be expended in accordance with the objects of the corporation, are representatives of the employer and employee agencies. The directors who represent government are *not* entitled to vote, hence do not determine expenditures of funds for the purposes of the corporation. Neither is the Secretariat entitled to expend monies otherwise than in accordance with its objects. Upon dissolution, its remaining property is to be distributed or disposed of to charitable organizations. In our respectful view, the fees required to be paid are *not* taxes in the traditional and constitutional sense.

It is doubtless that payments required under the *Regulation* have all of the incidents of taxation. They are imposed, under authority of the legislature, by a public body, for a public purpose. They are enforced by law. See, *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction et al.*, [1931] S.C.R. 357, 363, per Duff J. That a fee or levy may have all the *indicia* of a tax, yet not be or amount to taxation in the constitutional sense is settled law. See, *Reference re Agricultural Products Marketing Act*, [1978] 2 S.C.R. 1198, 1237, per Laskin C.J.; 1291, per Pigeon J. To constitute a charge a tax, all *indicia* of taxation must be met. All charges that meet the *indicia*, however, are *not* taxes in the constitutional sense.

What requires to be decided is whether the exacted payments may be supported as ancillary or adhesive to a valid provincially-regulated scheme. See, *Allard Contractors Ltd. v. Coquitlam (District)*, [1993] 4 S.C.R. 372, 405, per Iacobucci J. Required payments which are ancillary or adhesive to a regulatory scheme, in pith and substance, are supportable, hence admissible, under an enumerated head of provincial legislative authority, other than the taxation power. In the result, required payments supportable as ancillary or adhesive to a regulatory scheme enacted under an enumerated head of provincial legislative authority, other than the taxation power, may comprehend indirect taxation, provided it is used only to defer the costs of the regulation. See, *Allard Contractors Ltd. v. Coquitlam (District)*, *supra*, at p. 402, per Iacobucci J. See also, *Ontario Homebuilders' Association v. York Region Board of Education*, August 22, 1996 (S.C.C. #24085), paragraph 53, p. 46, per Iacobucci J.

It is *not* essential to the constitutional integrity of the impugned provisions that the Secretariat itself regulate labour relations in the construction industry in the province. For constitutional purposes, it will suffice that the payments required to fund the Secretariat are ancillary or adhesive to the statutory regime which regulates labour relations in the industry. The payments fund the Secretariat whose objects are to facilitate collective bargaining in and otherwise assist the industrial, commercial and institutional sector of the construction industry. They do *not* become part of the consolidated revenue fund of the province. They may *not* be used for any other purpose and are *not* distributed by provincial government direction. In our respectful view, the required payments to fund the Secretariat are ancillary or adhesive to the overall regulation of labour relations in the construction industry of which the Secretariat is an integral part. There is here no scheme of taxation in the constitutional sense. The *nexus* which is manifest in this case is more direct than that held constitutionally adequate to the task in *Allard Contractors Ltd. v. Coquitlam (District)*, *supra*; and *Ontario Homebuilders' Association v. York Region Board of Education*, *supra*.

It was also urged that the accumulation of a surplus by the Secretariat over the initial period of its operation demonstrates that no effort was made to match its revenues with its expenses. It follows, according to the appellants, that the required payments constitute an impermissible form of taxation.

There is not, so far as we are aware, any *per se* rule that the *fact* that a payment scheme under regulatory statute produces a *surplus* complects the enabling legislation with a hue of an unconstitutional scheme of taxation. What must be considered is whether a *reasonable attempt* has been made to *link* the fee revenues with the administrative costs associated with a regulatory scheme. Charges so linked will only be construed as tax where it is demonstrated that they mask a colourable attempt to raise revenues for provincial purposes. See, for example, *Reference re Farm Products Marketing Act*, [1957] S.C.R. 198, 260, per Fauteux J.; and, *Allard Contractors Limited v. Coquitlam (District)*, *supra*, at pp. 411-1, per Iacobucci J. In this case, the procedure used to determine the level of funding constituted a reasonable attempt to match revenues with expenditures. To inform the decision, the government sought advice from the very constituents who engage the services of the Secretariat and would benefit from its efforts. The Secretariat was in its infancy. The payments were tied to the objects of the corporation. They could be used for no other purpose. They were not, nor will they be disbursed at government direction, or for

its general purposes. There is no such chasm between revenues and expenditures as would permit characterization of the scheme as a colourable attempt to raise revenue through taxation.

We are satisfied that the Board was correct in its characterization of the impugned legislation for the purposes of determining its constitutionality. It is *not* legislation in relation to taxation. It is, rather, legislation the pith and substance of which is the regulation and promotion of labour relations within the construction industry in this province. It is competent the provincial legislature under Classes 13 and 16 of s. 92 of the *Constitution Act*, 1867.

3. Impermissible Sub-Delegation

It was *not* argued before the Board, but was argued here, that the Lieutenant Governor in Council improperly delegated the statutory authority to enact regulations *governing* the payments to be made, including *prescribing* methods for determining the payments to the Joint Committee whose flawed recommendations were adopted. The argument reduces to a complaint that, by adopting the payment schedule proposed by a majority of the participants in the Joint Committee, there was impermissible sub-delegation.

The issue raised was *not* argued before the Board. No evidence was sought, a *fortiori* adduced concerning the deliberations, if any, of the Lieutenant Governor in Council. What occurred here was consultation, prior to enactment of the *Regulation*, with the very constituency most directly affected by the levy and the work of the Secretariat. Various proposals were made. One, that of the majority, was replicated in the *Regulation*. There is no *per se* rule that where a regulation making authority adopts a recommendation proposed by a body whose advice has been sought, there is impermissible sub-delegation. Neither is there any rule or presumption for or against sub-delegation. The language of the statute ought be interpreted in light of its objects. See, for example, *Re Peralta and the Queen in Right of Ontario et al.* (1985), 16 D.L.R. (4th) 259, 272 (Ont. C.A.), per MacKinnon A.C.J.O. We are not persuaded that any impermissible sub-delegation occurred here.

4. Freedom of Association

it is also submitted that the charge imposed upon members of the Unions, and in consequence of their membership, infringes their freedom of association, thereby offends s. 2(d) of the *Charter*. It is said that compelled payment is an act of forced association with the Secretariat, thereby an infringement of s. 2(d).

In its reasons on this issue, the Board concluded as follows:

32. With respect to this argument, we adopt as correct the statement contained in the Factum of the Secretariat at paragraphs 50 and 51. In *Lavigne v. OPSEU*, [1991] 2 S.C.R. 211, the leading case in this area, the Supreme Court of Canada was unanimously of the view that no infringement of the freedom of association had occurred when a portion of the dues collected by a union pursuant to the payment of dues under the Rand Formula was utilized for 'political' or 'ideological' purposes. The Court was not however unanimous on the reasoning for arriving at this conclusion.
33. Wilson J. wrote on behalf of the three judges, and concluded that there was no infringement because section 2(d) does not protect the 'right not to associate' with others. McLaughlin J., writing only on her own behalf, assumed that section 2(d) had a negative aspect, but nevertheless found no infringement because the payment of dues could not reasonably be regarded as associating the individual with the views or values of the union. Put differently, compelled payments did not, in McLaughlin's view, constitute forced association. Thus, four judges in effect found that section 2(d) does not protect 'a right not to associate', insofar as compelled payments are concerned.

34. We are therefore of the view that the decision of the majority of the Court in *Lavigne* is determinative and binding upon us, and requires a finding that the payments in issue here do not infringe section 2(d) of the Charter.
35. Because of our conclusion in this respect, it is unnecessary to consider the effect of section 1 of the Charter.

We are not persuaded that the Board erred in law and its conclusion with respect to this ground of objection.

5. Disposition

For the reasons given, we are satisfied that the Board was correct in its determination of the preliminary issues raised before it. The application for judicial review is dismissed and the matter remitted to the Board to determine the merits of the Secretariat's application to compel the Unions to pay the amounts owing under the *Regulation*.

6. Costs

This is a matter of first instance. There shall be no order as to costs.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING OCTOBER 1996

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

2686-95-R: Office and Professional Employees International Union (Applicant) v. Dryden District Roman Catholic Separate School Board (Respondent)

Unit: "all employees of the Dryden District Roman Catholic Separate School Board in the District of Kenora, save and except Superintendents, persons above the rank of Superintendent, Teachers, Occasional Teachers, and the Executive Secretary to the Director of Education" (16 employees in unit)

Bargaining Agents Certified Subsequent to Vote

0853-94-R: International Union of Operating Engineers, Local 793 (Applicant) v. Désourdy 1949 Paving Inc. (Respondent)

Unit: "all employees of Désourdy 1949 Paving Inc. engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees of Désourdy 1949 Paving Inc. engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in all sectors of the construction industry in the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (38 employees in unit)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	2
Number of ballots marked in favour of applicant	2

4144-95-R: Labourers' International Union of North America, Local 506 (Applicant) v. Catholic Cemeteries - Archdiocese of Toronto (Respondent)

Unit: "all employees of the Catholic Cemeteries - Archdiocese of Toronto in the City of Mississauga, save and except persons above the rank of foreperson, students, grasscutters, persons employed for not more than 24 hours per week, office, clerical and sales staff" (10 employees in unit)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	1

0335-96-R: Ontario Public Service Employees Union (Applicant) v. Timiskaming Health Unit (Respondent)

Unit: "all employees of the respondent in the District of Timiskaming, save and except managers, persons above the rank of manager, accountant, computer consultant, persons employed in the Home Care Program and

Placement Coordination Services, and secretaries employed in a confidential capacity in labour relations matters” (56 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters’ list	64
Number of persons who cast ballots	52
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	47
Number of segregated ballots cast by persons whose names appear on voter’s list	5
Number of ballots marked in favour of applicant	36
Number of ballots marked against applicant	11
Number of ballots segregated and not counted	5

0421-96-R: United Food and Commercial Workers International Union (Applicant) v. Aradco Management Limited (Respondent)

Unit: “all employees of Aradco Management Limited in the City of Windsor, save and except foremen, persons above the rank of foreman, office, sales and clerical staff” (134 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters’ list	135
Number of persons who cast ballots	134
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	122
Number of segregated ballots cast by persons whose names appear on voter’s list	12
Number of segregated ballots cast by persons whose names do not appear on voters’ list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	93
Number of ballots marked against applicant	35
Number of ballots segregated and not counted	6

0550-96-R: International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Ken Anderson Electric Inc. (Respondent)

Unit: “all electricians and electricians’ apprentices in the employ of Ken Anderson Electric Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians’ apprentices in the employ of Ken Anderson Electric Inc. in all sectors of the construction industry in the District of Kenora including the Patricia portion, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (3 employees in unit)

Number of names of persons on revised voters’ list	4
Number of persons who cast ballots	9
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	6

1120-96-R: Christian Labour Association of Canada (Applicant) v. LensCrafters International Inc. (Respondent)

Unit: “all employees of LensCrafters International Inc. employed at the Erin Mills Town Centre, 5100 Erin Mills Parkway, in the Region of Peel, save and except supervisors and persons above the rank of supervisor” (13 employees in unit)

Number of names of persons on revised voters’ list	16
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	14
Number of segregated ballots cast by persons whose names appear on voter’s list	2
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	6

Number of ballots segregated and not counted	2
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1139-96-R: Service Employees International Union, Local 204 Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. The McGill Club (Respondent)

Unit #1: "all employees of The McGill Club in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, Fitness Instructors, office and clerical staff, and persons regularly employed for not more than 24 hours per week" (24 employees in unit)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	20
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	4

Unit #2: "all employees of The McGill Club in the Municipality of Metropolitan Toronto regularly employed for not more than 24 hours per week, save and except supervisors, persons above the rank of supervisor, Fitness Instructors, and office and clerical staff" (24 employees in unit)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	20
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	4

1456-96-R: Teamsters Local Union No. 419 (Applicant) v. York Disposal Service Ltd. (Respondent)

Unit: "all employees of York Disposal Service Ltd. working at or out of the City of Vaughan, save and except managers, persons above the rank of manager, office and sales staff" (42 employees in unit)

Number of names of persons on revised voters' list	42
Number of persons who cast ballots	42
Number of ballots marked in favour of applicant	21
Number of ballots marked against applicant	18
Number of ballots segregated and not counted	3

1464-96-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Hilton Electric Ltd. (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of Hilton Electric Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of Hilton Electric Ltd. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (4 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	4

1558-96-R: Canadian Union of Public Employees (Applicant) v. Corporation of the Town of Blind River (Respondent)

Unit: "all employees of the Corporation of the Town of Blind River, save and except managers and those above the rank of manager" (18 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	23
Number of ballots marked in favour of applicant	19
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	2

1598-96-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Autrans Corporation (Respondents)

Unit: "all employees of Autrans Corporation in the Town of Ingersoll, save and except supervisors, persons above the rank of supervisor, office, clerical, engineering and sales staff" (5 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	34
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	34
Number of ballots marked in favour of applicant	19
Number of ballots marked against applicant	15
Number of names of persons on revised voters' list	29
Number of persons who cast ballots	28
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	28
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	11

1615-96-R: United Steelworkers of America (Applicant) v. Modern Building Cleaning Inc. (Respondent)

Unit: "all employees of the respondent located at 101 McNabb Street in the Town of Markham save and except supervisors and persons above the rank of supervisor" (24 employees in unit)

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	4

1634-96-R: International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. SF Masonry Inc. (Respondent)

Unit: "all journeymen and apprentice bricklayers, stonemasons and plasterers and improvers in the employ of SF Masonry Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0

1638-96-R: Ontario English Catholic Teachers' Association (Applicant) v. The Simcoe County Roman Catholic Separate School Board (Respondent)

Unit: "all occasional teachers, as defined in subsection 1(1) of the Education Act employed by the Simcoe County Roman Catholic Separate School Board in the County of Simcoe and the District of Muskoka, save and except persons who when they are employed as substitutes for other teachers, are teachers as defined in *The School Boards and Teachers Collective Negotiations Act*" (152 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	165
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

1646-96-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Galmar Electrical Contracting Inc., Sanimar Electric Limited, Noranda Electrical Contractors Limited (Respondents)

Unit: "all electricians and electricians' apprentices in the employ of Galmar Electrical Contracting Inc.; Sanimar Electric Limited; and Noranda Electrical Contractors Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of Galmar Electrical Contracting Inc.; Sanimar Electric Limited; and Noranda Electrical Contractors Limited in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the County of Simcoe and the District Municipality of Muskoka; and the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (50 employees in unit)

Number of names of persons on revised voters' list	34
Number of persons who cast ballots	48
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	16
Number of ballots segregated and not counted	14

1650-96-R: Brewery, General and Professional Workers' Union (Applicant) v. Service Employees International Union (Respondent)

Unit: "all employees of Service Employees International Union's Regional Office save and except the Office Manager, Regional Director, supervisors and persons above the rank of supervisor" (11 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	8
Number of ballots segregated and not counted	1

1660-96-R: United Steelworkers of America (Applicant) v. Wendell Motor Sales Ltd. (Respondent)

Unit: “all employees of Wendell Motor Sales Ltd. in the City of Kitchener save and except Assistant Manager, persons above the rank of Assistant Manager, Office, Clerical and Sales staff” (38 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters’ list	39
Number of persons who cast ballots	39
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	37
Number of segregated ballots cast by persons whose names appear on voter’s list	2
Number of ballots marked in favour of applicant	29
Number of ballots marked against applicant	10

1724-96-R: International Union of Elevator Constructors, Local 50 (Applicant) v. Concord Elevator Inc. (Respondent)

Unit: “all journeymen and apprentice elevator constructors in the employ of Concord Elevator Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice elevator constructors in the employ of Concord Elevator Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman” (9 employees in unit)

Number of names of persons on revised voters’ list	9
Number of persons who cast ballots	9
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters’ list	9
Number of segregated ballots cast by persons whose names appear on voters’ list	0
Number of segregated ballots cast by persons whose names do not appear on voters’ list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

1729-96-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Regal Electricians Inc. (Respondent)

Unit: “all journeymen electricians and electricians’ apprentices in the employ of Regal Electricians Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen electricians and electricians’ apprentices in the employ of Regal Electricians Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (7 employees in unit)

Number of names of persons on revised voters’ list	4
Number of persons who cast ballots	7
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	0

1730-96-R: United Steelworkers of America (Applicant) v. Baycar Steel Fabricating Limited (Respondent)

Unit: “all employees of Baycar Steel Fabricating Limited in the Regional Municipality of Sudbury, save and except Supervisors and persons above the rank of Supervisor, and office, clerical, technical and sales staff and students employed during the regular school vacation period” (60 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	58
Number of persons who cast ballots	58
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	52
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	37
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	6

1744-96-R: Labourers' International Union of North America, Local 183 (Applicant) v. Waterford Building Maintenance Incorporated (Respondent)

Unit: "all employees of Waterford Building Maintenance Incorporated in the City of Scarborough, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (85 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	82
Number of persons who cast ballots	60
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	58
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	33
Number of ballots marked against applicant	25
Number of ballots segregated and not counted	1

1749-96-R: United Food and Commercial Workers International Union, AFL-CIO, CLC (Applicant) v. Horti-Pak Inc. (Respondent)

Unit: "all employees of Horti-Pak Inc. in the Town of Kingsville, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (14 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

1768-96-R: Hospitality & Service Trades Union, Local 261 (Applicant) v. Les Suites Hotel Ottawa (Respondent)

Unit: "all employees of Les Suites Hotel Ottawa, in the City of Ottawa, save and except supervisors, persons above the rank of supervisors, office and clerical staff" (56 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	56
Number of persons who cast ballots	50
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	50
Number of spoiled ballots	1

Number of ballots marked in favour of applicant	39
Number of ballots marked against applicant	10

1778-96-R: Ajax Independent Finishes Workers Union (Applicant) v. DuPont Canada Inc. (Respondent) v. Teamsters, Chemical Energy and Allied Workers, Local Union 1166 (Intervener)

Unit: "all employees of DuPont Canada Inc. in Ajax, Ontario, save and except foremen, persons above the rank of foreman, process, technical, sales development, colour development and control employees, nurse, office, clerical and sales staff and security guards" (141 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	141
Number of persons who cast ballots	116
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	116
Number of ballots marked in favour of applicant	72
Number of ballots marked in favour of intervener	44

1781-96-R: London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. The Women's Interval Home of Sarnia-Lambton Inc. (Respondent)

Unit: "all employees of The Women's Interval Home of Sarnia and Lambton Inc., save and except supervisors, persons above the rank of supervisor and office and clerical staff" (21 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	21
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	3

1798-96-R: Canadian Union of Public Employees (Applicant) v. The Board of Education for the City of Scarborough (Respondent)

Unit: "all employees of the Board of Education for the City of Scarborough, employed at its warehouse facility in the City of Scarborough, save and except warehouse supervisor, persons above the rank of supervisor, office and clerical staff and employees in any bargaining units for which a trade union held bargaining rights as of September 27, 1996" (12 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	2

1806-96-R: IWA - Canada (Applicant) v. Triac Industries Inc. (Respondent)

Unit: "all employees of Triac Industries Inc. in the City of Ajax, save and except Supervisors, persons above the rank of Supervisor, Designers, Office, Clerical and Sales Staff and Students employed during the school vacation period" (82 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	82
Number of persons who cast ballots	82
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	58
Number of segregated ballots cast by persons whose names appear on voter's list	24

Number of ballots marked in favour of applicant	36
Number of ballots marked against applicant	22
Number of ballots segregated and not counted	24

1834-96-R: Service Employees International Union Local 532 Affiliated with S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. The North Wentworth Association for the Mentally Retarded Inc. (Respondent)

Unit: "all employees of The North Wentworth Association for the Mentally Retarded Inc. in the Regional Municipality of Hamilton-Wentworth, save and except supervisors, persons above the rank of supervisor, office staff and "family home providers" (45 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	83
Number of persons who cast ballots	53
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	52
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	42
Number of ballots marked against applicant	11
Number of ballots segregated and not counted	0

1862-96-R: Service Employees Union, Local 663 (Applicant) v. The Corporation of the Village of Bath (Respondent)

Unit: "all employees of the Corporation of the Village of Bath in the County of Lennox and Addington save and except the Clerk Administrator and persons above the rank of Clerk Administrator" (2 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of ballots marked in favour of applicant	8

1877-96-R: Service Employees Local 268 affiliated with the SEIU, AF of L., C.I.O., and C.L.C. (Applicant) v. Canadian Red Cross Society (Ontario Zone) (Respondent)

Unit: "all employees of the Canadian Red Cross Society (Ontario Zone) in its City of Thunder Bay Branch Homemaker Service in the City of Thunder Bay, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (164 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	148
Number of persons who cast ballots	128
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	127
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	72
Number of ballots marked against applicant	53
Number of ballots segregated and not counted	1

1880-96-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. ADC Aluminum & Steel Contracting Limited (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of ADC Aluminum & Steel Contracting Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of ADC Aluminum & Steel Contracting Limited in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic

Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; and the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (12 employees in unit)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	1

1893-96-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Martin Building Maintenance (Respondent)

Unit: "all employees of Martin Building Maintenance employed at the London Life Centre, 255 Queens Avenue, London, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (25 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	26
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	11

1894-96-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. 1060139 Ontario Inc. o/a Edinburgh Care Centre (Respondent)

Unit: "all employees of 1060139 Ontario Inc. o/a Edinburgh Care Centre in the City of Guelph, save and except supervisors, persons above the rank of supervisor and employees in bargaining units for which any trade union held bargaining rights as of October 1, 1996" (6 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	5
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1899-96-R: United Steelworkers of America (Applicant) v. LPC Papers Ltd. (Respondent) v. Service & Commercial Employees' Union, Local 272, Chartered by Hotel Employees & Restaurant Employees International Union AFL-CIO-CLC (Intervener)

Unit: "all employees of LPC Papers Ltd. in Hawkesbury, save and except forepersons and persons above the rank of foreperson, and office and sales staff" (37 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	34
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32
Number of ballots marked in favour of applicant	32

1929-96-R: Laundry and Linen Drivers and Industrial Workers Teamsters, Local 847 (Applicant) v. G. K. Industries Ltd. (Respondent)

Unit: "all employees of G. K. Industries Ltd. in the Town of Vaughan, save and except supervisors, persons above the rank of supervisor, office staff, sales staff, clerical staff, accounting staff and students employed during the school vacation period" (22 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	6

1931-96-R: Canadian Union of Operating Engineers and General Workers (Applicant) v. The Salvation Army Addiction and Rehabilitation Centre Hamilton (Respondent)

Unit: "all employees of The Salvation Army Addiction and Rehabilitation Centre Hamilton employed in the City of Hamilton, save and except supervisors and persons above the rank of supervisor" (11 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	1

1934-96-R: Teamsters Local Union 91 (Applicant) v. Imperial Parking Limited d.b.a. Impark and d.b.a. Citipark Inc. (Respondent)

Unit: "all employees of Imperial Parking Limited d.b.a. Impark and d.b.a Citipark Inc. in the Regional Municipality of Ottawa-Carlton, save and except supervisors and auditors, persons above the rank of supervisor and auditor, office and clerical staff" (80 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	87
Number of persons who cast ballots	41
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	41
Number of ballots marked in favour of applicant	40
Number of ballots marked against applicant	1

1936-96-R: Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. T & F Lathing (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of T & F Lathing in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of T & F Lathing in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

Number of persons listed as in dispute	3
Number of ballots marked in favour of applicant	3

1952-96-R: Christian Labour Association of Canada (Applicant) v. Canada Catering Co. Ltd. (Respondent)

Unit: "all employees of Canada Catering Co. Limited in its housekeeping division at ATC Meaford in the County of Grey save and except supervisors and persons above the rank of supervisors, office, and clerical staff" (18 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	2

Applications for Certification Dismissed Without Vote

2022-96-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Essex Terminal Railway Co. (Respondent)

Applications for Certification Dismissed Subsequent to Vote

4602-94-R: Labourers' International Union of North America, Local 527 (Applicant) v. Mike Union Concrete Limited and 931923 Ontario Inc. operating as Patterned Concrete Ottawa (Respondent) v. The Operative Plasterers and Cement Masons' International Association of the United States and Canada, Local Union 124 (Intervener)

Unit: "(i) all construction labourers in the employ of the responding party, including all working foremen, journeymen and apprentice cement masons and waterproofers engaged in the industrial, commercial and institutional sector of the Construction Industry in the Province of Ontario, save and except non-working foreman those above the rank of non-working foreman and those employees for whom bargaining rights are already held by the applicant (ii) all construction labourers in the employ of the responding party, including all working foremen, journeyman and apprentices cement masons and waterproofers engaged in all sectors of the construction industry, except the industrial, commercial and institutional sector in the Regional Municipality of Ottawa-Carleton; the Counties of Prescott, Russell Glengarry, Stormont, Dundas, Grenville, Lanard, Leeds, Frontenac, Renfrew, Lennox and Addington, Hastings, Peterborough, Northumberland and Prince Edward save and except non-working foremen those above the rank of non-working foreman and those employees for whom bargaining rights are already held by the applicant; and (iii) all working foremen, journeymen and apprentice cement masons and waterproofers engaged in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario for whom the Union has bargaining rights" (6 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	9
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked in favour of intervener	5
Number of ballots segregated and not counted	0

0469-96-R: Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. The Westin Harbour Castle Hotel (Respondent)

Unit: "all front desk employees of The Westin Harbour Castle Hotel employed at its hotel located at One Harbour Square in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical, sales, reservations, administrative, and accounting staff, students employed in a co-operative work program without remuneration from the hotel, students employed during the school vacation periods, and persons for whom any trade union held bargaining rights as of May 13, 1996" (15 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	17
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	1

1447-96-R: International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. Olympic Masonry Inc. (Respondent)

Unit: "all journeymen and apprentice bricklayers in the employ of Olympic Masonry Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentice bricklayers in the employ of Olympic Masonry Inc. in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	2
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	2

1640-96-R: Teamsters Local Union 91 (Applicant) v. 1029959 Ontario Inc., o/a Macartney Farms (Respondent)

Unit: "all employees of 1029959 Ontario Inc. o/a Macartney Farms in the Regional Municipality of Ottawa Carleton, save and except Supervisors, persons above the rank of Supervisor, office, clerical and sales staff" (50 employees in unit)

Number of names of persons on revised voters' list	59
Number of persons who cast ballots	57
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	57
Number of ballots marked against applicant	57

1718-96-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Stellarc Precision Bar Inc.- Tube Division (Respondent)

Unit: "all employees of the respondent in the City of Brantford, Ontario, at Stellarc Precision Bar Inc. - Tube Division save and except foremen, persons above the rank of foremen, office staff and persons regularly employed for not more than twenty-four hours per week" (21 employees in unit)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	1

1741-96-R: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Delta Contracting Co. & Associates (Respondent)

Unit: "all painters and painters' apprentices in the employ of Delta Contracting Co. & Associates in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all painters and painters' apprentices in the employ of Delta Contracting Co. & Associates in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the

Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit) (*Clarity Note*)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	1

1743-96-R: United Steelworkers of America (Applicant) v. Lewis Bakeries Inc. (Respondent)

Unit: "all employees of the respondent in the City of London save and except foremen and persons above the rank of foremen and any employees covered by an existing Collective Agreement as at September 12, 1996" (25 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	30
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	30
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	18

1751-96-R: United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (Applicant) v. VytalBase T-R, A Division of Brambles Canada Inc. (Respondent)

Unit: "all employees of the respondent in the City of Toronto, save and except supervisors and those above the rank of supervisors" (26 employees in unit)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	26
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	16
Number of ballots segregated and not counted	3

1752-96-R: Canadian Union of Professional Security-Guards (Applicant) v. Top Guards Inc. (Respondent)

Unit: "all employees of Top Guards Inc. employed as Security Guards at Old Don Jail, 550 Gerrard Street in the Municipality of Metropolitan Toronto, save and except supervisors and persons above the rank of supervisor" (6 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	3

1804-96-R: Textile Processors, Service Trades, Health Care, Professional and Technical Employees, International Union Local 351 (Applicant) v. Travel-Lodge Toronto North, North York (Respondent)

Unit: "all employees of Travel-Lodge Toronto North, North York in the city of North York save and except supervisors, front desk, restaurant, clerical, sales, and accounting staff, and students employed during the school vacation" (16 employees in unit)

Number of names of persons on revised voters' list	19
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Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	12

1807-96-R: United Steelworkers of America (Applicant) v. Canarm Ltd. (Respondent) v. Canarm Employees Association (Intervener)

Unit: "all employees of Canarm Ltd. in the City of Brockville, save and except supervisors and forepersons, persons above the rank of supervisor and foreperson, office, clerical and sales staff" (26 employees in unit)

Number of names of persons on revised voters' list	35
Number of persons who cast ballots	33
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	28
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	11
Number of ballots marked in favour of intervener	19
Number of ballots segregated and not counted	3

1827-96-R: Ontario Sheet Metal Workers' & Roofers' Conference Sheet Metal Workers' International Association (Applicant) v. Medcon Mechanical Ltd. (Respondent)

Unit: "all journeymen and apprentice sheet metal workers in the employ of Medcon Mechanical Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentice sheet metal workers in the employ of Medcon Mechanical Ltd. in all other sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	3

1829-96-R: United Steelworkers of America (Applicant) v. Canada Brick, a Division of Jannock Limited (Respondent)

Unit: "all employees of Jannock Brick Limited or Jannock Limited in the City of Burlington save and except forepersons, persons above the rank of foreperson, office, clerical and sales staff" (152 employees in unit)

Number of names of persons on revised voters' list	158
Number of persons who cast ballots	152
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	150
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	74
Number of ballots marked against applicant	75
Number of ballots segregated and not counted	2

1876-96-R: Graphic Communications International Union, Local 500M (Applicant) v. Deluxe Toronto Limited (Respondent)

Unit: "all employees of Deluxe Toronto Limited in the City of Toronto in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the of supervisor, office, sales staff and students employed during the summer vacation period." (252 employees in unit)

Number of names of persons on revised voters' list	255
Number of persons who cast ballots	249
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	211
Number of segregated ballots cast by persons whose names appear on voter's list	38
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	77
Number of ballots marked against applicant	133
Number of ballots segregated and not counted	38

1913-96-R: Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. Raddison Hotel (Respondent)

Unit: "all employees of The Raddison Hotel in Markham, Ontario, save and except Supervisors, Persons above the rank of Supervisors, Front Desk, Office Staff, Sales Staff, Clerical Staff and Accounting Staff, students during school vacation period" (90 employees in unit)

Number of names of persons on revised voters' list	111
Number of persons who cast ballots	79
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	76
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	36
Number of ballots marked against applicant	40
Number of ballots segregated and not counted	2

1927-96-R: Teamsters Local Union No. 419 (Applicant) v. Davis Distributing Limited (Respondent)

Unit: "all employees of Davis Distributing Limited in the City of Mississauga, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (62 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	53
Number of persons who cast ballots	38
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	36
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	27
Number of ballots segregated and not counted	2

Applications for Certification Withdrawn

1310-96-R: United Food and Commercial Workers' International Union, Local 1000A, (Applicant) v. Sobeys Inc. (Respondent) (*Terminated*)

1453-96-R: Labourers' International Union of North America, Local 183 (Applicant) v. Pearl Maintenance Ltd. (Respondent)

1851-96-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Honest Electric Limited (Respondent)

1879-96-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ontario Siding Division of Jolic Enterprises (Respondent)

APPLICATION FOR COMBINATION OF BARGAINING UNITS

2037-95-R: United Steelworkers of America (Applicant) v. Grand & Toy Limited (Respondent) (*Withdrawn*)

FIRST AGREEMENT - DIRECTION

1917-96-FC: United Steelworkers of America (Applicant) v. Versatech Canada Ltd. (Respondent) (*Granted*)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

2086-95-R: United Steelworkers of America (Applicant) v. Peel Paper Products Ltd. Torontario Paper Products Ltd., Mario Fierro, Arnaldo Fierro, Anna Maria Felice (Respondent) (*Withdrawn*)

2218-95-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Glebe Electric Ltd., Jose Dorego, Donald Deschenes and Jose Dorego and Donald Deschenes, c.o.b. as Globe Electric Ottawa (Respondents) (*Withdrawn*)

3146-95-R: Labourers' International Union of North America, Local 527 (Applicant) v. Mike Union Concrete Limited, 931923 Ontario Inc. operating as Patterned Concrete Ottawa (Respondents) v. Operative Plasterers and Cement Masons International Association of the United States and Canada, Local Union 124 (Intervener) (*Endorsed Settlement*)

0117-96-R: United Steelworkers of America (Applicant) v. Ancon School Supplies Ltd., PLO School Supplies Ltd., Canwide Paper Products Inc., Spiral Paper Canada Limited, Mario Fierro, Arnaldo Fierro, Peel Paper Products Ltd., Torontario Paper Products Ltd., (Respondents) (*Withdrawn*)

0444-96-R: International Brotherhood of Painters and Allied Trades, and Glaziers, Local 1819 (Applicant) v. Atlantis Aluminum Products, Alumibrass Manufacturing Inc., Alumabrass and Irma Armstrong c.o.b. as Aluma-brass (Respondents) (*Granted*)

0629-96-R: Iron Workers District Council of Ontario and International Association of Bridge, Structural and Ornamental Iron Workers, Local 736 International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Milan Steel Erectors Inc., Milijan Joksimovic, Mick Joksimovic, T.C. Welding Service Inc. (Respondents) (*Endorsed Settlement*)

0911-96-R: United Brotherhood of Carpenters and Joiners of America, Local 93 (Applicant) v. Deschenes Structures (Eastern) Inc., Dibblee Construction Limited, Deschenes Construction (Ontario) Ltd. (Respondents) (*Granted*)

1393-96-R: Construction Workers Local 53 affiliated with Christian Labour Association of Canada (Applicant) v. Wayne Doyscher Electric, 506026 Ontario Ltd. c.o.b. as Tricon Electric (Respondents) (*Withdrawn*)

1581-96-R: Teamsters Local Union 230, Ready Mix, Building, Supply, Hydro and Construction Drivers, Warehousemen, and Helpers, affiliated with International Brotherhood of Teamsters (Applicant) v. Ferma Group Inc., Rena Road Construction Ltd., Ferma Concrete (1994) Inc., Ferma Ready-Mix Ltd., Malton Ready Mix Ltd., Malton Concrete & Ready-Mix Inc., Toronto Road Cartage Ltd., Toronto Haulage Inc., Ferant Paving Inc., and Ferma Building Materials Inc. (Respondents) (*Withdrawn*)

1599-96-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Autrans Corporation and Nifast Canada Corporation (Respondents) (*Withdrawn*)

1621-96-R: Sheet Metal Workers' International Association Local Union No. 285 (Applicant) v. 1082427 Ontario Limited c.o.b. as Everest Air Systems and Prima Air Limited (Respondents) (*Granted*)

1652-96-R: Labourers' International Union of North America, Local 183 (Applicant) v. Belmont Construction Co. Limited, Belmont Properties Inc. c.o.b. as Belmont Property Management, Bleeman Holdings Limited c.o.b. as Belmont Property Management, Grossman Holdings Limited, 581355 Ontario Limited, Pearl Maintenance Limited (Respondents) (*Withdrawn*)

SALE OF A BUSINESS

2218-95-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Glebe Electric Ltd., Jose Dorego, Donald Deschenes and Jose Dorego and Donald Deschenes, c.o.b. as Globe Electric Ottawa (Respondents) (*Withdrawn*)

3146-95-R: Labourers' International Union of North America, Local 527 (Applicant) v. Mike Union Concrete Limited, 931923 Ontario Inc. operating as Patterned Concrete Ottawa (Respondents) v. Operative Plasterers and Cement Masons International Association of the United States and Canada, Local Union 124 (Intervener) (*Endorsed Settlement*)

0117-96-R: United Steelworkers of America (Applicant) v. Ancon School Supplies Ltd., PLO School Supplies Ltd., Canwide Paper Products Inc., Spiral Paper Canada Limited, Mario Fierro, Arnaldo Fierro, Peel Paper Products Ltd., Torontario Paper Products Ltd., (Respondents) (*Withdrawn*)

0444-96-R: International Brotherhood of Painters and Allied Trades, and Glaziers, Local 1819 (Applicant) v. Atlantis Aluminum Products, Alumibrass Manufacturing Inc., Alumabrass and Irma Armstrong c.o.b. as Alumabrass (Respondents) (*Granted*)

0629-96-R: Iron Workers District Council of Ontario and International Association of Bridge, Structural and Ornamental Iron Workers, Local 736 International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Milan Steel Erectors Inc., Milijan Joksimovic, Mick Joksimovic, T.C. Welding Service Inc. (Respondents) (*Endorsed Settlement*)

0911-96-R: United Brotherhood of Carpenters and Joiners of America, Local 93 (Applicant) v. Deschenes Structures (Eastern) Inc., Dibblee Construction Limited, Deschenes Construction (Ontario) Ltd. (Respondents) (*Granted*)

1398-96-R: London and District Service Workers' Union, Local 220 (Applicant) v. Murphy Manor, Sarnia Lodge, North American Life, Twin Lake Terrace, Steeves and Rozema Enterprises Limited (Respondents) (*Withdrawn*)

1621-96-R: Sheet Metal Workers' International Association Local Union No. 285 (Applicant) v. 1082427 Ontario Limited c.o.b. as Everest Air Systems and Prima Air Limited (Respondents) (*Granted*)

1652-96-R: Labourers' International Union of North America, Local 183 (Applicant) v. Belmont Construction Co. Limited, Belmont Properties Inc. c.o.b. as Belmont Property Management, Bleeman Holdings Limited c.o.b. as Belmont Property Management, Grossman Holdings Limited, 581355 Ontario Limited, Pearl Maintenance Limited (Respondents) (*Withdrawn*)

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

3189-95-R: Caressant Care Nursing Home of Canada, Limited (Applicant) v. Canadian Union of Public Employees, Local 2225.09 (Respondent) (*Dismissed*)

0941-96-R: Thomas Capstick (Applicant) v. Labourers' International Union of North America, Local 1059 (Respondent) v. London Salvage & Trading Company Limited (Intervener)

Unit: "all employees of London Salvage & Trading Company Limited in the City of London, save and except the foreman, persons above the rank of foreman, office and sales staff" (23 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	26
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	8
Number of ballots marked against respondent	15
Number of ballots segregated and not counted	2

1358-96-R: Norm Draker (Applicant) v. United Food and Commercial Workers International Union, Local 175 (Respondent) v. Westcliffe Home Hardware (Intervener)

Unit: "all employees of 484446 Ontario Inc. c.o.b. as Westcliffe Home Hardware in the City of Hamilton, save and except three (3) assistant managers, persons above the rank of assistant manager, office and clerical staff" (18 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	17
Number of ballots marked in favour of respondent	4
Number of ballots marked against respondent	13

1458-96-R: Denise Jewell (Applicant) v. Hospitality, Commercial and Service Employees Union, Local 73 chartered by the Hotel Employees and Restaurant Employees International Union (Respondent) v. Tara-Lynn Leasing Ltd. (Intervener)

Unit: "all employees of Kelly's Professional Family Hair Care (formerly First Choice Haircutters), Thunder Bay, Ontario in positions listed in Schedule A hereof and to employees who were assigned to positions similar or in kind or class to those listed in Schedule A which might be created during the term of this collective agreement" (11 employees in unit) (*Clarity Note*) (*Granted*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	8

1522-96-R: United Food and Commercial Workers International Local 175 (Applicant) v. Unique Communications Inc. (Respondent) (*Granted*)

1641-96-R: Bill Steeves (Applicant) v. United Steelworkers of America, Local 965 (Respondent) v. Alliance Driver Services Inc. (Intervener)

Unit: "all employees employed by Alliance Driver Services Inc., in the Province of Ontario, working under the Company's service contract with Praxair Canada Inc., save and except dispatchers and persons above the rank of dispatcher and persons employed either in or out of the bargaining unit for a total of not more than 24 hours per week" (22 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	17
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	16

1647-96-R: Valerie Grace Sheppard (Applicant) v. Union of Needletrades, Industrial and Textile Employees - AFL-CIO, CLC (Respondent) v. Braids & Laces Ltd. (Intervener)

Unit: “all employees of Braids & Laces Ltd. at C21995 Durham Regional Road 23, in the Township of Brock, save and except supervisors, persons above the rank of supervisor, office sales staff, students, homeworkers, members of the owners family and security guards” (15 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of respondent	10
Number of ballots marked against respondent	5
Number of ballots segregated and not counted	1

1662-96-R: Employees of the Corporation of The Township of Golden (Applicant) v. United Steelworkers of America (Respondent) v. The Corporation of the Township of Golden (Intervener)

Unit: “all employees of The Corporation of the Township of Golden in the Township of Golden, save and except supervisors, persons above the rank of supervisor, the one position of Executive Secretary to both the Chief Administrative Officer and the Chief Building Official/By-Law Enforcement Officer and pending resolution by the Board, excluding as well, the Public Works Assistant Municipal Superintendent” (27 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	24
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of respondent	14
Number of ballots marked against respondent	10
Number of ballots segregated and not counted	1

1690-96-R: Harvey Byers, on his own behalf and on behalf of a group of employees of Spero Manufacturing Inc. (Applicant) v. The Employees' Association, Computing Devices Company (Respondent) v. Spero Manufacturing Inc. (Intervener)

Unit: “all employees of Spero Manufacturing Inc. working in plants or sites controlled by the company in the National Capital Region save and except: (a) supervisors and persons above the rank of supervisor (b) staff of the salaried payroll (c) members of the Bargaining Unit described in the Collective Agreement between the company and the salaried employees' alliance, Computing Devices (d) Senior Engineering representatives (e) Staff having access to confidential information relating to labour relations (f) (1) Secretaries (2) Personnel of the Human Resources Department including guards (3) Staff of the Budget Department (g) Field Service Representatives and Field Engineering Representatives (h) Co-op students (subject to Appendix F)” (39 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	39
Number of persons who cast ballots	38
Number of ballots marked in favour of respondent	21
Number of ballots marked against respondent	17

1760-96-R: Darren Baxter, Jason Hulst, Darryl King and Bonnie Palmer (Applicant) v. Canadian Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Respondent) v. Interior Truck Trim (Eastern) Ltd. (Intervener)

Unit: “all employees of Interior Truck Trim (Eastern) Limited, in the city of St. Thomas, save and except supervisors, persons above the rank of supervisor, office, sales and clerical staff.” (73 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	76
Number of persons who cast ballots	71
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	69

Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of respondent	13
Number of ballots marked against respondent	58

1811-96-R: All Employees of Imperial Parking in the Regional Municipality of Ottawa-Carleton (Applicant) v. International Brotherhood of Electrical Workers - Local 2228 (Respondent)

Unit: "all employees of Imperial Parking Ltd. d.b.a. Citipark in the City of Ottawa, save and except supervisors and auditors, persons above the rank of supervisor and auditor and office and clerical staff" (80 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	85
Number of persons who cast ballots	48
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	48
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	47

1812-96-R: Paul Bastien, Len Feurth and Gordon Bailey (Applicant) v. Retail Wholesale Canada Canadian Service Sector Division of the United Steelworkers of America, Local 1000 (Respondent) v. Sears Canada Inc. (Intervener)

Unit: "all employees of Sears Canada Inc. employed at its Parts and Service Centre, in the City of Windsor, save and except supervisors and persons above the rank of supervisor." (58 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	58
Number of persons who cast ballots	52
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	51
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of respondent	16
Number of ballots marked against respondent	35
Number of ballots segregated and not counted	1

1822-96-R: S. McNally & Sons Limited (Applicant) v. Teamsters Local Union No. 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent) (*Granted*)

1882-96-R: Giovanni Marchese and Zahid Nasim (Applicant) v. Retail, Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America, Local 1000 (Respondent) v. The Brick Warehouse Corporation (Intervener)

Unit: "all employees of The Brick Warehouse Corporation at 1352 Dufferin Street in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (28 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	8
Number of ballots marked against respondent	16

1885-96-R: Fay Roi (Applicant) v. Retail Wholesale Canada Canadian Service Sector Division of the United Steelworkers of America, Local 414 (Respondent) v. 913719 Ontario Ltd. c.o.b. as Adults Only Video (Intervener)

Unit: “all employees of 913719 Ontario Ltd. c.o.b. as Adults Only Video in the City of London, save and except Store Managers and persons above the rank of Store Manager.” (10 employees in unit) (*Granted*)

Number of names of persons on revised voters’ list	10
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	10
Number of ballots marked in favour of respondent	4
Number of ballots marked against respondent	6

1919-96-R: Richard Bloomfield, Employee of Guardian Alarm of Canada, Ltd. (Applicant) v. International Brotherhood of Electrical Workers, Local Union #773 (Respondent) v. Guardian Alarm Company of Canada Limited (Intervener) (*Granted*)

2075-96-R: Charles Wheelen, Jim Grummett and others (Applicant) v. United Steelworkers of America (Respondent) v. Stackpole Limited, Pump Components Divisions (Intervener) (*Withdrawn*)

2104-96-R: Alan Chau (Applicant) v. United Food & Commercial Workers International Union Local 175 (Respondent) v. Hertz Canada Limited (Intervener) (*Granted*)

2208-96-R: Vivian Corrigan (Applicant) v. United Steelworkers of America (Respondent) v. Tora Investments Inc. (Intervener) (*Granted*)

APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

2021-96-U: de Havilland Inc. and Bombardier Regional Aircraft Division (Applicants) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local Unions 673 and 112 and those persons named in appendix “A” (Respondent) (*Granted*)

2060-96-U: Fleet Industries (Applicant) v. International Association of Machinists and Aerospace Workers, Frontier Lodge 171 (Respondent) (*Withdrawn*)

2081-96-U: Livent Inc. (Applicant) v. The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local #58, Toronto and James C. Fuller (Respondent) (*Dismissed*)

2097-96-U: Toronto Transit Commission (Applicant) v. Gord Wilson, Sid Ryan, Linda Torney, Ontario Federation of Labour, Canadian Union of Public Employees, and Labour Council of Metropolitan Toronto (Respondent) v. Ms. Meenu Sikand-Taylor (Intervener) (*Granted*)

2127-96-U: Consumers Glass, Division of Consumers Packaging Inc. (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local Union 29, Hemi Metic, Munir Khalid, and Tony Maio (Respondent) (*Withdrawn*)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

1360-95-U: Robert McKay et al (Applicant) v. United Steelworkers of America International Union and Staff Representatives Union (Respondents) (*Withdrawn*)

2085-95-U: United Steelworkers of America (Applicant) v. Peel Paper Products Ltd., Torontario Paper Products Ltd., Mario Fierro, Arnaldo Fierro, Anna Maria Felice (Respondents) (*Withdrawn*)

2910-95-U: United Food and Commercial Workers International Union, Local 1000A (Applicant) v. Sobeys’s Inc. (Respondent) (*Dismissed*)

- 2916-95-U:** Garth Warren Philbrick (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 666 (Respondent) (*Dismissed*)
- 2974-95-U:** United Steelworkers of America (Applicant) v. The Brick Warehouse Corporation (Respondent) (*Dismissed*)
- 4042-95-U; 0696-96-U:** Jackie Springer (Applicant) v. Communications, Energy and Paperworkers Union of Canada, Local 30X (Respondent) v. International Paper Canada Inc. (Intervener) (*Dismissed*)
- 4090-95-U:** Graphic Communications Union, Local 41M (Applicant) v. Ottawa Citizen (Respondent) (*Withdrawn*)
- 0105-96-U:** Labourers' International Union of North America, Local 506 (Applicant) v. Metro Building Materials Inc. (Respondent) (*Withdrawn*)
- 0118-96-U; 0119-96-U:** United Steelworkers of America (Applicant) v. Peel Paper Products Ltd., Torontario Paper Products Ltd., Ancon School Supplies Ltd., P.L.O. School Supplies Ltd., Canwide Paper Products Inc., Spiral Paper Canada Limited, Mario Fierro, Arnaldo Fierro (Respondents); United Steelworkers of America (Applicant) v. Mario Fierro, Arnaldo Fierro, Peel Paper Products Ltd., Torontario Paper Products Ltd., Ancon School Supplies Ltd. (Respondents) (*Withdrawn*)
- 0201-96-U:** Sheila Ladd (Applicant) v. International Union, United Plant Guard Workers of America, Local 1956 and Burns International Security Services Limited (Respondents) (*Dismissed*)
- 0502-96-U; 1309-96-U:** United Food and Commercial Workers' International Union AFL-CIO-CLC, Local 1000A (Applicant) v. Sobeys Inc. (Respondent) (*Terminated*)
- 0518-96-U:** Association of Allied Health Professionals: Ontario (Applicant) v. Perth and Smiths Falls District Hospital (Respondent) v. Canadian Union of Public Employees Local 2119 (Intervener) (*Withdrawn*)
- 0592-96-U:** Armando Rescigno (Applicant) v. Zentil Plumbing & Heating Contractors Ltd., UA Local Union 46 (Respondents) (*Withdrawn*)
- 0665-96-U:** Forbo Industries Inc. (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 512 (Respondent) (*Withdrawn*)
- 0696-96-U:** Jackie Springer (Applicant) v. Communications, Energy and Paperworkers Union of Canada, Local 30X (Respondent) v. International Paper Canada Inc. (Intervener) (*Dismissed*)
- 0859-96-U; 0985-96-U:** Canadian Union of Public Employees and its Local 2150 (Applicant) v. The Corporation of the Township of Ernestown (Respondent); The Corporation of the Township of Ernestown (Applicant) v. Canadian Union of Public Employees and its Local 2150 (Respondent) (*Withdrawn*)
- 0874-96-U:** Canadian Union of Public Employees and its Local 576 (Applicant) v. Ottawa Civic Hospital (Respondent) (*Withdrawn*)
- 0922-96-U:** Ontario Public Service Employees Union (Applicant) v. Book Ambulance Service Ltd. (Respondent) (*Terminated*)
- 0964-96-U:** Milan Jelacic (Applicant) v. Aluminum, Brick and Glass Workers (AFL-CIO-CLC) of North America, Hamilton, Local 203G (Respondent) v. Consumers Glass, Division of Consumers Packaging Inc. (Intervener) (*Dismissed*)
- 0975-96-U:** Brigitte Miller (Applicant) v. Simcoe County Roman Catholic Separate School Custodial Association (Respondent) v. The Simcoe County Roman Catholic Separate School Board (Intervener) (*Withdrawn*)
- 1001-96-U:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Ken Anderson Electric Inc. (Respondent) (*Terminated*)

1037-96-U: Bernard M. Ezekiel (Applicant) v. International Union, United Plant Guard Workers of America (UPGWA) Local 1962 (Respondent) (*Withdrawn*)

1099-96-U: United Steelworkers of America (Applicant) v. S.A. Armstrong Limited (Respondent) (*Dismissed*)

1115-96-U: Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. The Westin Harbour Castle Hotel (Respondent) (*Withdrawn*)

1172-96-U: Betty A. Luxton (Applicant) v. Ontario Nurses' Association, Oshawa General Hospital (Respondents) (*Dismissed*)

1219-96-U: London and District Service Workers Union, Local 220 (Applicant) v. Meaford General Hospital (Respondent) (*Withdrawn*)

1365-96-U: Linda Diane Chumko (Applicant) v. Christian Labour Association of Canada (CLAC) (Respondent) v. Lee Manor Home for the Aged (Intervener) (*Withdrawn*)

1371-96-U: United Food and Commercial Workers International Union, Local 175 (Applicant) v. The Business Depot Ltd. (Respondent) (*Terminated*)

1406-96-U: Mohamad Jammal (Applicant) v. Atlantic Packaging Products Ltd., Communications, Energy and Paperworkers Union, Local 1894 (Respondents) (*Withdrawn*)

1473-96-U: Nelson Lehoux (Applicant) v. U.S.W.A. Local 777 (Respondent) (*Withdrawn*)

1540-96-U: Metro Civic Employees' Union, Local No. 43 (Applicant) v. City of Toronto Non-Profit Housing Corporation (Cityhome) (Respondent) (*Withdrawn*)

1550-96-U: Gamal Matta (Applicant) v. The Society of Ontario Hydro Professional and Administrative Employees (Respondent) (*Dismissed*)

1582-96-U: Teamsters Local Union 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen, and Helpers, affiliated with International Brotherhood of Teamsters (Applicant) v. Ferma Group Inc., Rena Road Construction Ltd., Ferma Concrete (1994) Inc., Ferma Ready-Mix Ltd., Malton Ready Mix Ltd., Malton Concrete & Ready-Mix Inc., Toronto Road Cartage Ltd., Toronto Haulage Inc., Ferant Paving Ltd., Ferma Building Materials Inc., Antonio Ferragine, Francesco Ferragine and Giovanni Ferragine (Respondents) (*Withdrawn*)

1590-96-U: Kenrick Michael Reynolds (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Respondent) v. Cable Tech Company Limited (Intervener) (*Dismissed*)

1614-96-U: Vincent Connolly (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) (*Dismissed*)

1639-96-U: Steve Goddard (Applicant) v. The Corporation of the Municipality of Clarington (Respondent) (*Dismissed*)

1653-96-U: Labourers' International Union of North America, Local 183 (Applicant) v. Belmont Construction Co. Limited, Belmont Properties Inc. c.o.b. as Belmont Property Management, Bleeman Holdings Limited c.o.b. as Belmont Property Management, Grossman Holdings Limited, 581355 Ontario Limited, Pearl Maintenance Limited (Respondents) (*Withdrawn*)

1658-96-U: Communications, Energy and Paperworkers Union of Canada, Local 593 (Praxair Unit) (Applicant) v. Praxair Canada Inc. (Respondent) (*Withdrawn*)

- 1659-96-U:** Chester R. Zaremba (Applicant) v. I.N.C.O. Ltd. (Respondent) v. United Steelworkers of America (Intervener) (*Withdrawn*)
- 1697-96-U:** United Food & Commercial Workers International Union (Applicant) v. Aradco Management Limited (Respondent) (*Withdrawn*)
- 1725-96-U:** Canadian Union of Public Employees, Local 1287 (Applicant) v. The Regional Municipality of Niagara (Respondent) (*Granted*)
- 1731-96-U:** Ronald Allen Young (Applicant) v. Phoenix - Plus TM (Respondent) (*Dismissed*)
- 1748-96-U:** Angello Malamas (Applicant) v. International Union and Hotel Employees Restaurant Employees Union, Local 75 (Respondent) (*Dismissed*)
- 1750-96-U:** Hilario Andrade (Applicant) v. Toronto Prince Hotel (Respondent) (*Dismissed*)
- 1761-96-U:** Ms. Linda Fiegehen (Applicant) v. Peel Memorial Hospital (Respondent) (*Dismissed*)
- 1771-96-U:** Wendy Dakin (Applicant) v. Weetabix of Canada (Respondent) (*Dismissed*)
- 1785-96-U:** Local Union 47 Sheet Metal Workers' International Association (Applicant) v. Almonte Fire Trucks Limited (Respondent) (*Withdrawn*)
- 1786-96-U:** Verna Merrill (Applicant) v. United Food & Commercial Workers International Union, Local 175 and 633 (Respondent) (*Withdrawn*)
- 1816-96-U; 1817-96-U:** Teamsters Local Union No. 91 (Applicant) v. Palmar Inc. (Respondent) (*Withdrawn*)
- 1844-96-U:** Canadian Union of Public Employees, Local 79 (Applicant) v. The Riverdale Hospital (Respondent) (*Withdrawn*)
- 1848-96-U:** Jaime Pineda (Applicant) v. CUPE Local 79 (Respondent) v. The Municipality of Metropolitan Toronto (Intervener) (*Dismissed*)
- 1886-96-U:** Raffick Aliry & Cam To Nhien (Applicants) v. United Steelworkers of America (Respondent) (*Dismissed*)
- 1895-96-U:** Darlene Richard (Applicant) v. Jeff Powell (Respondent) (*Dismissed*)
- 1896-96-U:** International Association of Machinists and Aerospace Workers, Frontier Lodge 171 (Applicant) v. Fleet Industries, a Fleet Aerospace Company, Ernie Dueck, Dieter Berger and Lee Havill (Respondent) (*Withdrawn*)
- 1897-96-U:** Karl Gottwald (Applicant) v. Association of Management, Administrative and Professional Crown Employees of Ontario (AMAPCEO) (Respondent) (*Withdrawn*)
- 1909-96-U:** Canadian Union of Public Employees and its Local 3851 (Applicant) v. Nelson House (Respondent) (*Withdrawn*)
- 1916-96-U:** United Steelworkers of America (Applicant) v. Versatech Canada Ltd. (Respondent) (*Withdrawn*)
- 1928-96-U:** United Food and Commercial Workers International Union, AFL-CIO-CLC (Applicant) v. Horti-Pak Inc. (Respondent) (*Withdrawn*)
- 1963-96-U:** Chandradat Singh (Applicant) v. U.S.W.A. Local 8505 (Respondent) (*Dismissed*)
- 1967-96-U:** Ronald Holder (Applicant) v. Laidlaw Waste Systems (Respondent) (*Dismissed*)

1980-96-U: CUPE Local 2553 (Applicant) v. CUPE National (Respondent) (*Dismissed*)

2002-96-U: Joe Severiano (Applicant) v. Quality Meat Pkrs Toronto Abattoirs Ltd. (Respondent) (*Dismissed*)

2003-96-U: Norma Thomas (Applicant) v. Frank Piscerchia Local 75 (Respondent) (*Dismissed*)

2017-96-U: Kevin Bake (Applicant) v. Labourers International Union (Local 1059) and Domclean Ltd. (Respondents) (*Withdrawn*)

2018-96-U: Antonio B. Furtado (Applicant) v. Merrick Homes (Respondent) (*Dismissed*)

2050-96-U: Edward Tseytlin (Applicant) v. International Association of Machinists and Aerospace Worker, Local 1295 (Respondent) (*Withdrawn*)

2056-96-U: John Kowopka (Applicant) v. C.U.P.E. Local 1144, St. Joseph's Health Centre (Respondents) (*Dismissed*)

2068-96-U: Deborah J. Smith (Applicant) v. Canadian Union of Public Employees - Local 167 and Corporation of the City of Hamilton (Respondents) (*Dismissed*)

2080-96-U: Mr. Anthony James Bryant (Applicant) v. General Motors of Canada and Canadian Auto Worker's Union (Respondents) (*Dismissed*)

2083-96-U: Rodrigo Vergara (Applicant) v. CAW-CANADA, Local 385 (Respondent) (*Dismissed*)

2121-96-U: Steve Goddard (Applicant) v. Canadian Union of Public Employees, Local 74 (Respondent) (*Dismissed*)

APPLICATION FOR INTERIM ORDER

2015-96-M: International Alliance of Theatrical Stage Employees, Local 471 (Applicant) v. Ogden Entertainment Services, MCA Concerts Canada, and Donald K. Donald Productions (Respondents) v. Nasco Services Inc. (Intervener) (*Dismissed*)

APPLICATIONS FOR RELIGIOUS EXEMPTION

1950-96-M: Mr. Howard Needleman (Applicant) v. Ontario Public Service Employees Union and Ministry of Finance, Corporations Tax Branch (Respondents) (*Withdrawn*)

FINANCIAL STATEMENT

4178-94-M: Farouk Ahamed (Applicant) v. Canadian Union of Public Employees, Local 1996 (Respondent) (*Withdrawn*)

1328-96-M; 1329-96-M: John J. Lewis (Applicant) v. International Brotherhood of Electrical Workers IBEW Local Union 105 (Hamilton Ont.) (Respondent) (*Dismissed*)

JURISDICTIONAL DISPUTES

1465-95-JD: Ontario Public Service Employees Union (Applicant) v. Trenton Memorial Hospital (Respondent) v. Ontario Nurses' Association, Service Employees' Union, Local 183 (Interveners) (*Dismissed*)

0519-96-JD: Association of Allied Health Professionals: Ontario (Applicant) v. Perth and Smiths Falls District Hospital (Respondent) v. Canadian Union of Public Employees Local 2119 (Intervener) (*Withdrawn*)

1454-96-JD: Ironworkers District Council of Ontario, International Association of Bridge, Structural and Ornamental Ironworkers, Local 700 (Applicant) v. Refac Industrial Contractors Inc., Millwrights District Council of Ontario, Millwrights Local 1244, United Brotherhood of Carpenters and Joiners of America, Ontario Erectors Association Incorporated, Association of Millwrighting Contractors of Ontario (Respondents) (*Granted*)

1746-96-JD: Iron Workers District Council of Ontario, International Association of Bridge, Structural and Ornamental Iron Workers, Local 759 (Applicant) v. Micron Mechanical Ltd., Millwright District Council of Ontario and its Local 1151 (Respondents) (*Granted*)

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

3971-95-M: Ontario Public Service Employees Union (Applicant) v. The Toronto Hospital (Respondent) (*Withdrawn*)

1013-96-M: Canadian Union of Public Employees and its Local 3110 (Applicant) v. The Corporation of the County of Simcoe (Respondent) (*Withdrawn*)

1349-96-M: Ontario Nurses' Association (Applicant) v. Chatham Public General Hospital (Respondent) (*Withdrawn*)

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

3415-95-OH: William J. Viveen (Applicant) v. Babcock & Wilcox Industries Ltd. (Respondent) (*Dismissed*)

0348-96-OH: Kimberly Chapman (Applicant) v. Oshawa/Courtice News (Respondent) (*Withdrawn*)

1238-96-OH: Christine Herbacz (Applicant) v. Inmet Mining Corporation (Respondent) (*Withdrawn*)

1548-96-OH: Paul Fong (Applicant) v. Ontario Hydro (Respondent) (*Dismissed*)

1549-96-OH: Gamal Matta (Applicant) v. Ontario Hydro (Respondent) (*Dismissed*)

1707-96-OH: Richard Knight (Applicant) v. Caledon Laboratories (Respondent) (*Withdrawn*)

1722-96-OH: Frank Traynor Frantray Construction Ltd. (Applicant) v. Kevin Sullivan Sullivan Entertainment Inc., Wind At My Back Productions Ltd. (Respondents) (*Endorsed Settlement*)

1904-96-OH: Tony Copoc (Applicant) v. Blastech Corporation (Respondent) (*Dismissed*)

CONSTRUCTION INDUSTRY GRIEVANCES

4125-95-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Centennial Railings Limited, 1168888 Ontario Inc. (Respondents) (*Withdrawn*)

0403-96-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Power Mechanical Contracting Inc. (Respondent) (*Endorsed Settlement*)

0591-96-G; 1809-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. Oxville Homes Limited/Fernbrook (Respondent); Labourers' International Union of North America, Local 183 (Applicant) v. Oxville Homes Limited/Fernbrook Homes Limited (Respondent) (*Withdrawn*)

0628-96-G; 0630-96-G; 1404-96-G: International Association of Bridge, Structural and Ornamental Iron Workers, Local 736 (Applicant) v. Milan Steel Erectors Inc., Milijan Joksimovic, Mick Joksimovic, T.C. Welding Service Inc. (Respondents); International Association of Bridge, Structural and Ornamental Iron Workers, Local 721

(Applicant) v. Milan Steel Erectors Inc., Milijan Joksimovic, Mick Joksimovic, T.C. Welding and Installation Inc. (Respondents) (*Endorsed Settlement*)

1216-96-G: International Union of Operating Engineers, Local 793 (Applicant) v. Simon Crane Rental Ltd. (Respondent) (*Withdrawn*)

1282-96-G: International Union of Bricklayers and Allied Craftsmen, Local 6 (Applicant) v. Franklin Floor Systems (Respondent) (*Granted*)

1292-96-G: United Brotherhood of Carpenters and Joiners of America, Local 249 (Applicant) v. T.A. Andre & Sons (Ontario) Ltd. (Respondent) (*Granted*)

1332-96-G: International Union of Bricklayers and Allied Craftworkers Local #20 Ontario (Applicant) v. Cruz Construction and Renovations Inc. (Respondent) (*Endorsed Settlement*)

1344-96-G: International Union of Operating Engineers, Local 793 (Applicant) v. 806519 Ontario Limited o/a Trigger Contracting (Respondent) (*Granted*)

1355-96-G: Labourers' International Union Of North America, Local 1036 (Applicant) v. Newman Construction (Respondent) (*Terminated*)

1366-96-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 800 (Applicant) v. Delta Catalytic (Respondent) (*Endorsed Settlement*)

1437-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. Mariofino Contracting Inc. (Respondent) (*Granted*)

1442-96-G: Labourers' International Union of North America Local 183 (Applicant) v. 675602 Ontario Ltd. (Respondent) (*Endorsed Settlement*)

1505-96-G: International Association of Bridge, Structural and Ornamental Iron Workers, Local 736 (Applicant) v. Modern Railings & Metalcraft Ltd. (Respondent) (*Withdrawn*)

1514-96-G: International Association of Bridge, Structural and Ornamental Iron Workers, Local 736 (Applicant) v. Black & McDonald Ltd. (Respondent) (*Withdrawn*)

1535-96-G: Labourers' International Union of North America, Local 183, (Applicant) v. Belmont Properties Inc. c.o.b. as Belmont Property Management, Bleeman Holdings Limited c.o.b. as Belmont Property Management, Grossman Holdings Limited, 581355 Ontario Limited (Respondents) (*Withdrawn*)

1694-96-G; 1695-96-G; 1696-96-G: International Union of Elevator Constructors, Local 90 and Timothy Bess-zong (Applicant) v. Dover Corporation (Canada) Ltd. (Respondent); International Union of Elevator Constructors, Local 90 and Rick Pollard (Applicant) v. Dover Corporation (Canada) Ltd. (Respondent) (*Withdrawn*)

1702-96-G: Labourers' International Union of North America Local 183 (Applicant) v. Four Seasons Homes Ltd. & Connoisseur Homes (Mississauga) Ltd. (Respondents) (*Withdrawn*)

1710-96-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Servocraft Limited (Respondent) (*Granted*)

1711-96-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Ansell Mechanical Ltd. (Respondent) (*Withdrawn*)

1714-96-G; 1715-96-G; 1716-96-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Sterling Electrical Contractors Inc. (Respondent) (*Withdrawn*)

1732-96-G: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Power Cable Installations (Toronto) Limited (Respondent) (*Withdrawn*)

1734-96-G: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Independent High Voltage Limited (Respondent) (*Withdrawn*)

1738-96-G: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. 1127610 Ontario Limited c.o.b. Belstone Electric (Respondent) (*Withdrawn*)

1739-96-G: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. T.P. Electric A Division of Tony Presutti Electric Limited (Respondent) (*Withdrawn*)

1758-96-G; 1759-96-G: International Union of Elevator Constructors Local 90 and Rodger Hennings (Applicant) v. Dover Corporation (Canada) Limited (Respondent); International Union of Elevator Constructors Local 90 and Robert Brave (Applicant) v. Dover Corporation (Canada) Limited (Respondent) (*Withdrawn*)

1776-96-G: Labourers' International Union of North America, Local 1036 (Applicant) v. Custodis-Cottrell Canada, Inc. (Respondent) (*Withdrawn*)

1783-96-G: Labourers' International Union of North America, Local 1059 (Applicant) v. The Atlas Corporation Vaughan Masonry Inc. (Respondents) (*Endorsed Settlement*)

1789-96-G: United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. Aquicon Construction Co. Ltd. (Respondent) (*Endorsed Settlement*)

1793-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. S.T.V. Transport Ltd. (Respondent) (*Granted*)

1799-96-G: International Union of Operating Engineers, Local 793 (Applicant) v. Dulepka Equipment Rentals Limited (Respondent) (*Withdrawn*)

1802-96-G: Labourers' International Union of North America, Local 527 (Applicant) v. Cornwall Gravel Co. Ltd. (Respondent) (*Withdrawn*)

1803-96-G: Labourers' International Union of North America, Local 527 (Applicant) v. Grant Ready Mix Ltd. (Respondent) (*Withdrawn*)

1843-96-G: International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. The Municipality of Metropolitan Toronto (Respondent) (*Endorsed Settlement*)

1847-96-G: Construction Workers Local 53, CLAC (Applicant) v. Riverside Roofing Limited (Respondent) (*Withdrawn*)

1850-96-G: International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Q-Tech Limited 663925 Ontario Inc. (Respondent) (*Endorsed Settlement*)

1856-96-G: International Union of Operating Engineers, Local 793 (Applicant) v. L. Regina Construction Limited (Respondent) (*Withdrawn*)

1860-96-G; 1861-96-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Redacor Industries Ltd. (Respondent); Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Stucor Construction Ltd. (Respondent) (*Withdrawn*)

1863-96-G: Metropolitan Plumbing and Heating Contractors' Association (Applicant) v. L. Pupolin Plumbing & Heating Co. Ltd. (Respondent) (*Granted*)

1870-96-G: Labourers' International Union of North America, Local 527 (Applicant) v. Carwell Construction Limited Primal Contracting (Respondent) (*Granted*)

1918-96-G: Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rae Brothers Ltd. (Respondent) (*Endorsed Settlement*)

1939-96-G: United Brotherhood of Carpenters & Joiners of America Local 249 (Applicant) v. Bob Solmes Construction Services (Respondent) (*Granted*)

1940-96-G: Sheet Metal Workers International Association, Local 537 (Applicant) v. Calorific Construction Limited (Respondent) (*Withdrawn*)

1982-96-G: Labourers' International Union of North America, Local 506 (Applicant) v. CMC Carrier Mausoleums Construction (Respondent) (*Withdrawn*)

1984-96-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Secroft Metal Products Ltd. (Respondent) (*Withdrawn*)

2028-96-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Plaza Electric II Ltd. (Respondent) (*Endorsed Settlement*)

2039-96-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Finn Woodworking & Carpentry (Respondent) (*Granted*)

2069-96-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Today Tile (Respondent) (*Withdrawn*)

2089-96-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Armjan Interiors Inc. (Respondent) (*Endorsed Settlement*)

2090-96-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. G.D. Perrier Carpentry Ltd., Iris Perrier c.o.b. as Panel Erectors (Respondents) (*Withdrawn*)

2092-96-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Vanbots Construction Corporation (Respondent) (*Withdrawn*)

REFERRAL FROM MINISTER (SEC. 3(2)) HLDA

1708-96-M; 1745-96-U: Select Living (1991) Ltd. (Applicant) v. Canadian Union of Public Employees (Employees of Select Living (1991) Ltd., The Georgian in the District of Cochrane) (Respondent); The Westmount Retirement Residence (Applicant) v. Canadian Union of Public Employees and its Local 3607 (Respondent) (*Granted*)

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

2758-94-U; 2983-94-U: Emmanuel Abegunrin (Applicant) v. Toronto Electric Commissioners and Marcus McEwen et al (Respondents) v. Canadian Union of Public Employees, Local 1 (Intervener); Emmanuel Abegunrin (Applicant) v. Toronto Hydro Commissioners and Marcus McEwen and Elisa Iacampo and Bryan Hughes and Steve Kelly and Christopher Buckler, et al (Respondent) v. The Canadian Union of Public Employees, Local 1 (Intervener) (*Denied*)

0091-96-U: Louis Martin (Applicant) v. John Haggis Business Manager, I.U.B.A.C. Local 5, (Respondent) (*Denied*)

0285-96-U: Benny (Ben) P. Negridge (Applicant) v. United Food and Commercial Workers Union Local Local 709-3, United Food and Commercial Workers International Union (Respondents) v. J.M. Schneiders Ltd., National Meats (Interveners) (*Denied*)

0668-96-M: Imperial Parking Limited (Applicant) v. Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Respondent) v. The United Food and Commercial Workers International Union, Local 175 (Intervener) (*Withdrawn*)

0992-96-OH: Benjamin (Ben) Sarmiento (Applicant) v. ADH Custom Metal Fabricators Inc. (Respondent) (*Denied*)

1100-96-R; 1101-96-G: International Union of Bricklayers and Allied Craftsmen, Local 28 (Applicant) v. G & G Masonry, Division of 970512 Ontario Inc. and Harvard Construction Inc. (Respondent) (*Granted*)

1237-96-OH: Shelly Stiles (Applicant) v. Horizon Plastics Company Ltd. (Respondent) v. United Food and Commercial Workers International Union (Intevener) (*Denied*)

1300-96-R: The Deck Hands/Ordinary Seaman aboard the Northern Belle ("Deck Hands") (Employer) v. Seafarers International Union (United States) ("S.I.U.") (Respondent) (*Dismissed*)

1781-96-R: London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. The Women's Interval Home of Sarnia-Lambton Inc. (Respondent) (*Denied*)

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING NOVEMBER 1996

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

3500-94-R: The Ontario Pipe Trade Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Strathcona Nova Incorporated and Whitmire Construction Limited (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Strathcona Nova Incorporated and Whitmire Construction Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Strathcona Nova Incorporated and Whitmire Construction Limited in all sectors of the construction industry in the County of Renfrew, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

3829-94-R: Ontario Public Service Employees Union (Applicant) v. Oshawa General Hospital (Respondent) v. Canadian Union of Public Employees and its Local 45 (Intervener)

Unit #1: "all technologists, phlebotomy technicians, laboratory assistants, and pathology assistants (autopsy master) in the employ of Oshawa General Hospital in its medical laboratories at Oshawa, and all pharmacy technicians in the employ of Oshawa General Hospital in its pharmacy at Oshawa, and all biomedical engineering technologists, save and except chief technologists, pharmacists, and persons above the rank of chief technologist and pharmacist, persons regularly employed for not more than 24 hours per week, student technologists, students employed during the school vacation period, and persons covered by subsisting collective agreements between Oshawa General Hospital and the Canadian Union of Public Employees, Local 45, and the Canadian Union of Operating Engineers, Local 101, and the Ontario Nurses' Association" (10 employees in unit)

Unit #2: "all technologists, phlebotomy technicians and laboratory assistants employed in medical laboratories and all pharmacy assistants employed in the pharmacy of Oshawa General Hospital and all biomedical engineering technologists employed for not more than 24 hours per week, and students employed during the school vacation period, save and except chief technologists, pharmacists and persons above the rank of chief technologist or pharmacist and persons covered by subsisting collective agreements" (10 employees in unit)

0466-95-R: United Steelworkers of America (Applicant) v. The Corporation of the Township of Golden (Respondent)

Unit: "all employees of The Corporation of the Township of Golden in the Township of Golden, save and except supervisors, persons above the rank of supervisor, and the one position of Executive Secretary to both the Chief Administrative Officer and the Chief Building Official/By-Law Enforcement Officer" (28 employees in unit) (*Having regard to the agreement of the parties*)

1102-95-R: Carpenters and Allied Workers, Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ven-Rez Products Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Ven-Rez Products Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Ven-Rez Products Ltd. in all sectors of the construction industry in the

Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (4 employees in unit)

Bargaining Agents Certified Subsequent to Vote

4078-95-R: Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Castro Drywall (Respondent)

Unit: “all carpenters and carpenters’ apprentices in the employ of Castro Drywall, in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters’ apprentices in the employ of Castro Drywall in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (3 employees in unit)

Number of names of persons on revised voters’ list	0
Number of persons listed as in dispute	0
Number of persons who cast ballots	1
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	1
Number of segregated ballots cast by persons whose names appear on voter’s list	0
Number of segregated ballots cast by persons whose names do not appear on voters’ list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0765-96-R: Ontario Nurses’ Association (Applicant) v. The Port Hope and District Hospital (Respondent) v. Canadian Union of Public Employees (Intervener)

Unit: “all paramedical employees of The Port Hope and District Hospital in the Town of Port Hope, save and except Department Heads, persons above the rank of Department Head, students employed during the school vacation period and persons for whom any trade union held bargaining rights as of June 11, 1996” (18 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters’ list	19
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	12
Number of segregated ballots cast by persons whose names appear on voter’s list	3
Number of segregated ballots cast by persons whose names do not appear on voters’ list	0
Number of ballots marked in favour of applicant	12
Number of ballots marked in favour of intervener	0
Number of ballots segregated and not counted	3

0845-96-R: United Food and Commercial Workers Local 1000A (Applicant) v. Semple’s Your Independent Grocer (Respondent)

Unit: “all employees of 863683 Ontario Limited c.o.b. as Semple’s Your Independent Grocer at 173 Dundas Street East in the Town of Belleville employed in the capacity of Department Managers save and except Store Manager, persons above the rank of Store Manager, Bookkeeper, Grocery Manager, Head Cashiers and Front End Manager” (8 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0948-96-R: The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 508 (Applicant) v. WABI Development Corporation (Respondent)

Unit: "all journeymen and apprentice plumbers and pipefitters in the employ of Wabi Development Corporation in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice plumbers and pipefitters in the employ of Wabi Development Corporation in that portion of the District of Algoma south of the 49th parallel of latitude, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (25 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1175-96-R: Service Employees International Union, Local 204 Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Meadowcroft Holdings Inc. as Meadowcroft Health Care Management Group, and 1107989 Ontario Limited, c.o.b. as Nutra 2000, and 660910 Ontario Limited, c.o.b. as Clover Catering (Respondents) v. Hotel Employees Restaurant Employees Union, Local 75 (Intervener)

Unit: "all employees of 660910 Ontario Limited, c.o.b. as Clover Catering at Brookside and Hilltop retirement homes in the Regional Municipality of York, save and except supervisors, persons above the rank of supervisors and office and clerical staff" (47 employees in unit) (*Having regard to the agreement of the parties*)

1222-96-R: Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. 1112740 Ontario Inc., Robert Brandon o/a Tri-Line Contracting (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of 1112740 Ontario Inc., Robert Brandon o/a Tri-Line Contracting in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of 1112740 Ontario Inc., Robert Brandon o/a Tri-Line Contracting in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	2

1635-96-R: The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Ian Martin Limited (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Ian Martin Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers and plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of

Ian Martin Limited in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman” (3 employees in unit)

Number of names of persons on revised voters’ list	3
Number of persons who cast ballots	3
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1773-96-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Loeb Inc. c.o.b. as Loeb Balmoral (Respondent)

Unit: “all employees of Loeb Inc. employed in the City of Brampton, save and except department managers and persons above the rank of department manager” (83 employees in unit)

Number of names of persons on revised voters’ list	85
Number of persons who cast ballots	58
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	57
Number of segregated ballots cast by persons whose names appear on voter’s list	1
Number of ballots marked in favour of applicant	49
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	1

1865-96-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Peel Resource Recovery Operations Inc. (Respondent)

Unit: “all employees of Peel Resource Recovery Operations Inc., in the Municipality of Brampton, save and except supervisors, persons above the rank of supervisor, office and clerical staff and students employed during the school vacation period” (43 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters’ list	48
Number of persons who cast ballots	44
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	40
Number of segregated ballots cast by persons whose names appear on voter’s list	4
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	4

1889-96-R: Labourers’ International Union of North America Local 183 (Applicant) v. River Oaks Homes Management Inc. (Respondent)

Unit: “all construction labourers of River Oaks Homes Management Inc. in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills, and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman” (5 employees in unit)

Number of names of persons on revised voters’ list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	6
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	2

1925-96-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647 (Applicant) v. Weston Bakeries Limited (Respondent)

Unit: "all persons regularly employed by Weston Bakeries Limited at Sudbury for not more than 24 hours per week and all students employed by Weston Bakeries Limited at Sudbury during the school vacation period, save and except foremen and supervisors, office staff and employees in bargaining units for which any trade union held bargaining rights as of October 9, 1996" (11 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	0

1935-96-R: International Association of Machinists and Aerospace Workers (Applicant) v. Alarm Control Center Inc. (Respondent)

Unit: "all employees in the City of Cambridge of Alarm Control Center Inc., save and except supervisors, persons above the rank of supervisor, office and sales staff, and persons working less than 24 hours per week" (12 employees in unit)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	11
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	2

1947-96-R: Union of Employees of Muller Manufacturing (Applicant) v. Muller Manufacturing Ltd. (Respondent)

Unit: "all employees of Muller Manufacturing Ltd. in the City of Cornwall, save and except salesmen, buyers and office employees" (2 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1960-96-R: Labourers' International Union of North America, Local 183 (Applicant) v. Merrick Homes Inc. (Respondent)

Unit: "all construction labourers in the employ of Merrick Homes Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	3

1993-96-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Chrysler Canada Ltd. (Respondent) v. Canadian Union of Operating Engineers and General Workers (Intervener)

Unit: "all employees of the Corporation's hourly rated employees in its power plant at Windsor, Ontario, employed as licensed engineers" (28 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	1
Number of ballots marked in favour of intervener	1
Number of ballots segregated and not counted	0

2006-96-R: Ontario Nurses' Association (Applicant) v. Comcare (Canada) Limited (Respondent)

Unit: "all employees of Comcare (Canada) Limited in the City of Kingston employed as Registered Nurses and Registered Practical Nurses, save and except managers and persons above the rank of manager, and save and except the positions of Quality Management Coordinator, Office Administrator, Team Leader and Scheduling Leader" (82 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	92
Number of persons who cast ballots	63
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	53
Number of segregated ballots cast by persons whose names appear on voter's list	10
Number of ballots marked in favour of applicant	38
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	10

2082-96-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. 496986 Ontario Limited, carrying on business as Windsor Hilton (Respondent) v. Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Intervener)

Unit: "all employees of 496986 Ontario Limited, carrying on business as Windsor Hilton employed at its Hotel in the City of Windsor, save and except supervisors, persons above the rank of supervisor, office, sales and accounting staff" (201 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	157
Number of persons who cast ballots	120
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	120
Number of spoiled ballots	3
Number of ballots marked in favour of applicant	110
Number of ballots marked against applicant	7

2099-96-R: Christian Labour Association of Canada (Applicant) v. Central Park Lodge (Kitchener) (Respondent) v. London & District Service Workers (Intervener)

Unit: "all employees of Central Park Lodge in the City of Kitchener, save and except supervisors and foremen, persons above the rank of supervisors or foremen, office staff, professional nursing staff, physiotherapists and occupational therapists" (171 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	171
Number of persons who cast ballots	130
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	130
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	96
Number of ballots marked in favour of intervener	32

2110-96-R: Teamsters Local Union No. 419 (Applicant) v. Globelle Corporation (Respondent)

Unit: "all employees of Globelle Corporation in the City of Mississauga, save and except supervisors, persons above the rank of supervisor, office and sales staff" (37 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	36
Number of persons who cast ballots	33
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	30
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	20
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	3

2111-96-R: United Steelworkers of America (Applicant) v. 1012940 Ontario Limited carrying on business as Howard Johnston Plaza-Hotel Toronto East (Respondent)

Unit: "all employees of 1012940 Ontario Limited carrying on business as Howard Johnson Plaza-Hotel Toronto East, in the City of Scarborough, save and except supervisors and persons above rank of supervisor and persons in bargaining units for which any trade union held bargaining rights as of October 18, 1996" (6 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	3

2141-96-R: Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Eastern Eaves (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Eastern Eaves in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Eastern Eaves in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (8 employees in unit)

Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of ballots marked in favour of applicant	8

2153-96-R: Ontario Nurses' Association (Applicant) v. The Regional Municipality of Durham (Respondent)

Unit: "all registered and graduate nurses of the Regional Municipality of Durham employed in a nursing capacity at its Lakeview Manor in the Town of Beavertown, save and except Resident Care Co-ordinators and persons above the rank of Resident Care Co-ordinator" (11 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	1

2160-96-R: International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Pan Project (Respondent)

Unit: "all ironworkers and ironworkers' apprentices in the employ of Pan Project, in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all ironworkers and ironworkers' apprentices in the employ of Pan Project in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (19 employees in unit)

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	6

2177-96-R: United Food & Commercial Workers International Union, Local 175 (Applicant) v. Tara-Lynn Leasing Ltd. c.o.b. Kelly's Professional Family Hair Care (Respondent)

Unit: "all employees of Tara-Lynn Leasing Ltd. c.o.b. Kelly's Professional Family Hair Care in the City of Thunder Bay, save and except managers and persons above the rank of manager" (9 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of ballots marked in favour of applicant	9

2186-96-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Caledon Tubing a Division of REA Tool and Die Ltd. (Respondent)

Unit: "all employees of Caledon Tubing a Division of REA Tool and Die Ltd. in the Town of St. Mary's save and except supervisors, persons above the rank of supervisor, office, clerical, engineering and sales staff" (22 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22

Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	10

2206-96-R: Service Employees Union Local 268 affiliated with the S.E.I.U., A.F. of L., C.I.O. and C.L.C. (Applicant) v. Castlegreen Co-operative (Respondent)

Unit: "all employees of Castlegreen Co-operative in the City of Thunder Bay, save and except supervisors and persons above the rank of supervisor" (8 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	4
Number of ballots segregated and not counted	3

2207-96-R: International Association of Bridge, Structural and Ornamental Iron Workers, Local 759 (Applicant) v. Con-Force Structures Limited (Respondent)

Unit: "all ironworkers and ironworkers' apprentices in the employ of Con-Force Structures Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all ironworkers and ironworkers' apprentices in the employ of Con-Force Structures Limited in all sectors of the construction industry in the District of Thunder Bay, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	3

2215-96-R: Brewery, General and Professional Workers' Union (Applicant) v. Harold Security Service Limited (Respondent) v. International Union, United Plant Guard Workers of America Local 1962 (Intervener)

Unit: "all employees of Harold Security Service Limited employed as Security Guards save and except supervisors or their designate, persons above the rank of supervisor, office and clerical staff" (57 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	57
Number of persons who cast ballots	40
Number of ballots marked in favour of applicant	39
Number of ballots marked in favour of intervener	1

2219-96-R: Canadian Union of Public Employees (Applicant) v. The Sudbury General Hospital of The Immaculate Heart of Mary (Respondent)

Unit: "all office and clerical employees of The Sudbury General Hospital of The Immaculate Heart of Mary in The City of Sudbury employed for not more than 24 hours per week and students employed during the school vacation period, save and except Supervisors, persons above the rank of Supervisor, Secretary to the Executive Director, Secretaries to the Assistant Executive Directors, Secretary to the Director of Finance, Secretary to the Director of Public Relations and Fundraising, Secretaries to the Director of Personnel Services, Payroll Clerks, Accounting Officers, and any person for whom any trade union held bargaining rights as of October 30, 1996, as well as those who have managerial functions or are employed in a confidential capacity in matters relating to the *Labour Relations Act*, 1995 and amendments thereto" (59 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	59
Number of persons who cast ballots	19

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	1

2266-96-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Speciality Care Inc., c.o.b. as Sweetbriar Lodge Nursing Home (Respondent)

Unit: "all employees of Speciality Care Inc., c.o.b. as Sweetbriar Lodge Nursing Home, in the Township of Clearview, save and except Head Nurse/Supervisors, persons above the rank of Head Nurse/Supervisor, Book-keeper/Secretary, Life Enrichment Director, and persons in bargaining units for which any trade union held bargaining rights as of November 1, 1996" (6 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	5

2275-96-R: Local Union 636 of the International Brotherhood of Electrical Workers (Applicant) v. Hydro-Electric Commission of the Township of Brantford (Respondent) v. The Power Workers' Union (Intervener)

Unit: "all employees of the Hydro-Electric Commission of the Township of Brantford, save and except foreman, persons above the rank of foreman, office clerical staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period" (6 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of applicant	5
Number of ballots marked in favour of intervener	1

2292-96-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Mel Evans Electric Div. of 1136234 Ontario Limited (Respondent)

Unit: "all journeymen and apprentice electricians and journeymen and apprentice linemen in the employ of Mel Evans Electric Div. of 1136234 Ontario Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice electricians and journeymen and apprentice linemen in the employ of Mel Evans Electric Div. of 1136234 Ontario Limited in all sectors of the construction industry in the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	1

2307-96-R: Teamsters Local Union 91 (Applicant) v. Corporation of the Township of Clarence (Respondent)

Unit: "all employees of the Corporation of the Township of Clarence in the Township of Clarence, save and except supervisors, persons above the rank of supervisor, and persons regularly employed for not more than 24 hours per week" (101 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	24
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	24
Number of segregated ballots cast by persons whose names appear on voters' list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	22
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

2325-96-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 739609 Ontario Inc. c.o.b. as Unic Sheet Metal and Eavestroughing (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of 739609 Ontario Inc. c.o.b. as Unic Sheet Metal and Eavestroughing in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of 739609 Ontario Inc. c.o.b. as Unic Sheet Metal and Eavestroughing in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (14 employees in unit)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of ballots marked in favour of applicant	12

Applications for Certification Dismissed Without Vote

2122-96-R: Cement, Lime, Gypsum & Allied Workers Division of International Brotherhood of Boilermakers Iron Ship Builders, Blacksmiths Forgers & Helpers AFL-CIO-CFL (Applicant) v. United Aggregates Ltd. (Respondent)

Applications for Certification Dismissed Subsequent to Vote

1762-96-R: York University Staff Association (Applicant) v. York University (Respondent)

Unit: "all persons employed by York University at the Keele Campus and Glendon Campus as Residence Tutors, save and except managers, persons above the rank of manager, and all employees covered by subsisting collective agreements" (6 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

1901-96-R: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. S.E. Construction Incorporated (Respondent)

Unit: "all painters and painters' apprentices in the employ of S. E. Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all painters and painters' apprentices in the employ of S. E. Construction Ltd. in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar,

and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman” (7 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	6
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	4

1905-96-R: International Union of Bricklayers & Allied Craftsmen, Local #10 (Applicant) v. Maresco Limited (Respondent)

Unit: “all construction labourers, bricklayers, bricklayers' apprentices, painters, painters' apprentices, carpenters (drywallers, tapers) and carpenters' (drywallers, tapers) apprentices in the employ of Maresco Limited in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman” (10 employees in unit)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	10
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	8

1972-96-R: United Steelworkers of America (Applicant) v. Pegasus Foodmart Ltd. c.o.b. as Beach Valu-Mart (Respondent)

Unit: “all employees of Pegasus Foodmart Ltd. c.o.b. as Beach Valu-Mart in the Municipality of Toronto save and except Manager and persons above the rank of Manager, office and clerical staff” (22 employees in unit)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	8

1995-96-R: Canadian Marine Officers Union (Applicant) v. Niagara Arms Retirement Hotel & Retirement Residences Inc. (Respondent)

Unit: “all employees of Niagara Arms Retirement Hotel and Retirement Residences Inc. at 181 Niagara Street in the city of St. Catharines, save and except supervisors and persons above the rank of supervisor, office and clerical staff” (34 employees in unit)

Number of names of persons on revised voters' list	44
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	27
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	13
Number of ballots segregated and not counted	5

2045-96-R: International Brotherhood of Electrical Workers Local 636 (Applicant) v. Embury Company (Respondent)

Unit: "all employees of the Embury Company Limited Orillia at the Orillia plant save and except Plant Manager, Assistant Plant Manager and those above the rank of leadhand" (11 employees in unit)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	7

2053-96-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Brian Cullen Motors Limited (Respondent)

Unit: "all office clerical employees of Brian Cullen Motors Limited in the City of St. Catharines save and except supervisors and persons above the rank of supervisor, salespersons and those employees already covered by an existing CAW collective agreement" (13 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	8

2055-96-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 141 (Applicant) v. Leon's Furniture Limited (Respondent)

Unit: "all employees of Leon's Furniture Limited in the City of London, save and except supervisors, persons above the rank of supervisor, office and sales staff" (13 employees in unit)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	15

2062-96-R: Textile Processors, Service Trades, Health Care Professional and Technical Employees International Union Local 351 (Applicant) v. Imperial Parking Limited, carrying on business as Impark, Hamilton (Respondent)

Unit: "all employees of Imperial Parking Limited, carrying on business as Impark, Hamilton, in the Cities of Hamilton, Burlington, and Oakville, save and except training supervisors, site managers, persons above the rank of site manager, sales, office and clerical staff, students employed during the school vacation period, and persons represented by any other trade union who holds bargaining unit rights" (34 employees in unit)

Number of names of persons on revised voters' list	44
Number of persons who cast ballots	39
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	21
Number of ballots segregated and not counted	2

2074-96-R: Construction Workers Local 53, affiliated with Christian Labour Association of Canada (Applicant) v. TransAlta Energy Corporation (Respondent)

Unit: "all employees of TransAlta Energy Corporation at 2545 Chrysler Centre and 2600 Temple Drive in the City of Windsor, save and except supervisors, persons above the rank of supervisor, persons employed for not more

than 24 hours per week, students employed during the school vacation period/co-op experience period and office and clerical staff" (16 employees in unit)

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	1

2112-96-R: Laundry & Linen Drivers & Industrial Workers Local 847 (Applicant) v. Savin Canada Inc. (Respondent)

Unit: "all employees of Savin Canada at 6650 Pacific Circle, Mississauga, Ontario, save and except supervisors, persons above the rank of supervisor, office staff, accounting staff, in house and out of house technicians." (22 employees in unit)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	14

2118-96-R: Labourers' International Union of North America, Local 1059 (Applicant) v. David Martin Enterprises (London) Limited (Respondent)

Unit: "all employees of David Martin Enterprises (London) Limited, employed at Multi Fittings Inc., 1055 Wilton Grove, London, Ontario, save and except supervisors, persons above the rank of supervisor, sales, clerical and office staff." (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	2

2129-96-R: The Canadian Union of Operating Engineers and General Workers (Applicant) v. McMaster University (Respondent) v. International Union of Operating Engineers Local 772 (Intervener)

Unit: "all Stationary Engineers and their Helpers employed in the Power House and in the Campus Utilities Network of the Employer, save and except the Chief Stationary Engineer, the Assistant Chief Stationary Engineer and the Physical Environment Controls Supervisor." (10 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of applicant	1
Number of ballots marked in favour of intervener	5

2163-96-R: IWA - Canada (Applicant) v. Pizza Hut 721458 Ontario Limited (Respondent)

Unit: "all employees of the Pizza Hut (721458 Ont. Limited) in the District of Timiskaming, save and except assistant manager, persons above the rank of assistant manager" (21 employees in unit)

Number of names of persons on revised voters' list	20
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Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	11

2214-96-R: The Canadian Union of Operating Engineers and General Workers (C.U.O.E.) (Applicant) v. Stackpole Limited (Respondent) v. United Steelworkers of America (Intervener)

Unit: "all employees of Stackpole Limited at 550 Evans Avenue, in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical and technical staff, sales staff, persons regularly employed for not more than 24 hours per week and students employed during their school vacation period" (144 employees in unit)

Number of names of persons on revised voters' list	144
Number of persons who cast ballots	143
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	141
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	54
Number of ballots marked in favour of intervener	85
Number of ballots segregated and not counted	2

2244-96-R: United Food and Commercial Workers International Union (Applicant) v. K Mart Canada Limited (Respondent)

Unit: "all employees of K-Mart Canada Limited employed in the City of St. Thomas, save and except department managers, persons above the rank of department manager, loss prevention officers and students employed in a co-operative work program" (95 employees in unit)

Number of names of persons on revised voters' list	95
Number of persons who cast ballots	87
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	87
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	33
Number of ballots marked against applicant	53

2267-96-R: Ontario Nurses' Association (Applicant) v. Corporation of the City of St. Thomas c.o.b. as Valleyview Home for the Aged (Respondent)

Unit: "all registered and graduate nurses employed at Valleyview Home for the Aged in the City of St. Thomas, Ontario, except the Director of Nursing and anyone above the rank of Director of Nursing" (13 employees in unit)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	8

2368-96-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Freightliner of Canada Ltd. (Respondent)

Unit: "all employees of Freightliner of Canada Ltd., in the City of St. Thomas, save and except coaches, persons above the rank of coach, engineering, medical staff, designated skill trainers and administrative assistant" (969 employees in unit)

Number of names of persons on revised voters' list	969
Number of persons who cast ballots	947
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	897
Number of segregated ballots cast by persons whose names appear on voter's list	50
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	241
Number of ballots marked against applicant	655
Number of ballots segregated and not counted	50

2394-96-R: United Food and Commercial Workers International Union, Local 1000A (Applicant) v. Nor Baker Inc. (Respondent)

Unit: "all employees of Nor Baker Inc. in the Regional Municipality of York, save and except persons above the rank of working foreperson, lab employees, office and sales staff" (111 employees in unit)

Number of names of persons on revised voters' list	111
Number of persons who cast ballots	107
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	90
Number of segregated ballots cast by persons whose names appear on voter's list	17
Number of ballots marked in favour of applicant	26
Number of ballots marked against applicant	64
Number of ballots segregated and not counted	17

Applications for Certification Withdrawn

2244-95-R: United Brotherhood of Carpenters and Joiners of America Local Union 1669 (Applicant) v. Filex Corporation (Respondent)

1446-96-R: Labourers' International Union of North America, Local 837 (Applicant) v. Metric Contracting Service Corporation (Respondent)

1985-96-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Stone Electric (Canada) 3269353 Canada Inc. (Respondent)

2238-96-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Century Building Services Division of Century Distributing Inc. (Respondent)

2323-96-R: International Union of Elevator Constructors, Local 96 (Applicant) v. Concord Elevator (Ottawa) Ltd. (Respondent)

2355-96-R: International Brotherhood of Painters and Allied Trades, Local Union 1819 (Glaziers) (Applicant) v. J. B. Aluminum Products Limited (Respondent)

2366-96-R: Brewery, General and Professional Workers' Union (Applicant) v. Centenary Health Centre (Centenary Hospital Association) (Respondent) v. International Union, United Plant Guard Workers of America (Intervener)

2605-96-R: Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Tri-D Concrete & Drain Ltd. (Respondent)

2649-96-R: United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Con-Pro Industries Ltd. (Respondent)

FIRST AGREEMENT - DIRECTION

1593-96-FC: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Dover Corporation (Canada) Limited, Industrial Division (Respondent) (*Granted*)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

2196-94-R; 2948-95-R: International Union of Bricklayers and Allied Craftsmen, Local 2 Toronto/Barrie and the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (Applicant) v. Haelzle Masonry Ltd. and W. Hamel Masonry Ltd. (Respondents); International Union of Bricklayers and Allied Craftsmen, Local 2, Toronto, Ontario and the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (Applicant) v. Haelzle Masonry Ltd., W. Hamel Masonry Ltd., Caza Masonry, & Paul's Masonry (Respondents) (*Granted*)

2933-95-R: Sheet Metal Workers' International Association, Local 473 (Applicant) v. Jiffy Cleat Co. and J.R. Robertson Construction Steel Service Ltd. (Respondents) v. David Colman and Employees of J.R. Robertson Construction Steel Service Ltd. (Intervener) (*Withdrawn*)

0340-96-R: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Bonavista Sheet Metal Ltd., A. P. Sheet Metal and Mechanical Ventilation ('A.P. Ventilation') (Respondents) (*Endorsed Settlement*)

1217-96-R: Service Employees International Union, Local 204 (Applicant) v. Meadowcroft Holdings Inc. c.o.b. as Meadowcroft Health Care Management Group, Meadowcroft Management Holdings Inc., Meadowcroft Group Ltd., c.o.b. as Meadowcroft Health Care Management Group and c.o.b. as the Meadowcroft General Partnership, 1097337 Ontario Ltd., George Kuhl, 1107989 Ontario Limited, c.o.b. as Nutra 2000 and 660910 Ontario Ltd., c.o.b. as Clover Catering (Respondents) (*Endorsed Settlement*)

1376-96-R; 1378-96-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1090 (Applicant) v. Custom Racks Limited and Lenworth Metal Products Limited (Respondents); National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1090 (Applicant) v. Custom Racks Limited and 1140415 Ontario Inc. (Respondents) (*Withdrawn*)

1704-96-R: International Brotherhood of Painters & Allied Trades, Local 1795 (Glaziers) (Applicant) v. Neucor Glass & Mirror Ltd. and Modern Glass & Mirror Ltd. (Respondents) (*Granted*)

SALE OF A BUSINESS

2196-94-R; 2948-95-R: International Union of Bricklayers and Allied Craftsmen, Local 2 Toronto/Barrie and the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (Applicant) v. Haelzle Masonry Ltd. and W. Hamel Masonry Ltd. (Respondents); International Union of Bricklayers and Allied Craftsmen, Local 2, Toronto, Ontario and the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (Applicant) v. Haelzle Masonry Ltd., W. Hamel Masonry Ltd., Caza Masonry, & Paul's Masonry (Respondents) (*Granted*)

2933-95-R: Sheet Metal Workers' International Association, Local 473 (Applicant) v. Jiffy Cleat Co. and J.R. Robertson Construction Steel Service Ltd. (Respondents) v. David Colman and Employees of J.R. Robertson Construction Steel Service Ltd. (Intervener) (*Withdrawn*)

0340-96-R: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Bonavista Sheet Metal Ltd., A.P. Sheet Metal and Mechanical Ventilation ('A.P. Ventilation') (Respondents) (*Endorsed Settlement*)

0532-96-R: The Governing Council of the University of Toronto (Applicant) v. The Faculty Association of the Ontario Institute for Studies in Education (Respondent) v. University of Toronto Faculty Association (Intervener) (*Granted*)

1376-96-R; 1378-96-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1090 (Applicant) v. Custom Racks Limited and Lenworth Metal Products Limited (Respondents); National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1090 (Applicant) v. Custom Racks Limited and 1140415 Ontario Inc. (Respondents) (*Withdrawn*)

1704-96-R: International Brotherhood of Painters & Allied Trades, Local 1795 (Glaziers) (Applicant) v. Neucor Glass & Mirror Ltd. and Modern Glass & Mirror Ltd. (Respondents) (*Granted*)

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

2243-95-R: Georges Charbonneau, Benoit Gadouas and Denis Schnupp on their own behalf and on behalf of a group of employees at S & S Electric, A Division of 694270 Ontario Ltd. (Applicant) v. International Brotherhood of Electrical Workers, Local 586 (Respondent) v. S & S Electric, a Division of 1101370 Ontario Ltd. (Intervener) (*Withdrawn*)

3923-95-R: The Brotherhood Foundation, c.o.b. The Wexford (Applicant) v. The Christian Labour Association of Canada (Respondent) (*Withdrawn*)

1959-96-R: The Employees of A1 Rent-A-Tool Ontario Ltd. (Applicant) v. Retail Wholesale Canada, Canadian Service Sector, Division of the United Steelworkers of America, Local 440 (Respondent) v. A1 Rent-A-Tool Ontario Ltd. (Intervener)

Unit: "all employees at A1 Rent-A-Tool Ontario Ltd. in the municipality of Metropolitan Toronto, save and except sales people, managers, persons above the rank of manager, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (34 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	36
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	34
Number of ballots marked in favour of respondent	12
Number of ballots marked against respondent	22

1971-96-R: Terry Coulter (on behalf of employees) (Applicant) v. Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 880 (Respondent) v. The Windsor Solid Waste District of Browning- Ferris Industries Ltd. (Formerly Browning-Ferris Industries of Windsor Ltd.) (Intervener) (*Dismissed*)

1996-96-R: Mohammed Atcha on behalf of a Group of Employees (Applicant) v. Retail Wholesale Canada, Canadian Service Sector Division of United Steel Workers of America, Local 1000, United Steel Workers of America (Respondent) v. The Brick Warehouse Corporation (Intervener)

Unit: "all employees of The Brick Warehouse Corporation in the City of Burlington, save and except supervisors, persons above the rank of supervisor, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (37 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	34
Number of ballots marked in favour of respondent	23
Number of ballots marked against respondent	11

2008-96-R: Kevin J. Biggs and Donald Trimble (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) v. United Aggregates Ltd. (Intervener)

Unit: "all employees of United Aggregates Ltd. engaged in the aggregate production operation at the pit in Caledon Township, save and except Foremen and Dispatchers, persons above the rank of Foreman and Dispatcher, Laboratory Technicians, Office and Sales Staff, students employed during the school vacation period and persons covered by a subsisting collective agreement" (24 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	24
Number of ballots marked in favour of respondent	5
Number of ballots marked against respondent	19

2044-96-R: Christine Leah Walker (Applicant) v. Retail Wholesale/Canada Canadian Service Sector Division of the United Steelworkers of America (Respondent) v. Millscott Holdings Ltd. (Intervener)

Unit: "all employees of Millscott Holdings Ltd. at 477 Gardiners Road in the city of Kingston, save and except General Managers, Assistant Managers, persons above the rank of General Manager, and Assistant Manager, delivery drivers and office and clerical staff" (36 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	36
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	28
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of respondent	10
Number of ballots marked against respondent	18
Number of ballots segregated and not counted	1

2046-96-R: Ken Teeple (Applicant) v. Kingston & Area Taxi Staff Association Local #001 (Respondent) v. Modern Taxi Cab Company (Intervener)

Unit: "all dispatchers and telephone operators of Modern Taxi Cab Ltd. in the City of Kingston, save and except Vice President and persons above the rank of Vice President" (13 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of ballots marked against respondent	11

2061-96-R: Cora Gardner (Applicant) v. United Steelworkers of America (Respondent) v. Ken Bodnar Ent. Inc. (Intervener)

Unit: "all employees of Ken Bodnar Enterprises Inc. in the Town of Collingwood, save and except Store Manager, Service Manager, Automotive Manager, persons above the rank of Store Manager, Service Manager, Automotive Manager and Office Manager, and the Head Cashier." (52 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	52
Number of persons who cast ballots	47
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	45
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of respondent	27
Number of ballots marked against respondent	19
Number of ballots segregated and not counted	1

2098-96-R: Brent Selles (Applicant) v. United Steelworkers of America (Respondent) v. Intelligarde International Inc. (Intervener) (*Dismissed*)

2134-96-R: John Hanson (Applicant) v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Respondent) v. Famous Players Inc. (Intervener)

Unit: "all employees of the employer at its Eglinton Theatre in the Municipality of Metropolitan Toronto save and except Relief Managers and persons above the rank of Relief Manager and those persons for whom IATSE Local 173 and 303 holds bargaining rights" (14 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of ballots marked in favour of respondent	7
Number of ballots marked against respondent	6
Number of ballots segregated and not counted	0

2161-96-R: Jacques Belle Isle Wholesale Cash & Carry Ltd. (Applicant) v. UFCW Locals 175 and 633 (Respondent) (*Granted*)

2180-96-R: David Mckee (Applicant) v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada, (CAW-CANADA) and its Local 195 (Respondent) v. Dart Machine Limited (Intervener)

Unit: "all employees of Dart Machine Limited in the Township of Sandwich South, save and except foreman and persons above the rank of foreman, office and sales staff" (64 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	64
Number of persons who cast ballots	61
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	61
Number of ballots marked in favour of respondent	41
Number of ballots marked against respondent	20

2185-96-R: Steve Martin (Applicant) v. Graphic Communications International Union, Local 517-M (Respondent) v. Aylmer Express Limited (Intervener) (*Dismissed*)

2205-96-R: Clifford Mason and Conrad Charbonneau on their own behalf and the Employees of 608507 Ontario Inc. c.o.b. Capital Security and Investigations (Applicant) v. United Steelworkers of America (Respondent) v. 608507 Ontario Inc. c.o.b. Capital Security and Investigations (Intervener) (*Dismissed*)

2245-96-R: Steve Fraser (Applicant) v. Retail, Wholesale of Canada, Canadian Service Sector, Division of the United Steelworkers of America, Local 414 (Respondent) v. The Benjamin Koyman Group (Intervener)

Unit: "all employees of Benjamin Koyman Group Inc. in the Municipality of Metropolitan Toronto, save and except Store Manager and persons above the rank of Store Manager" (4 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked against respondent	2

2248-96-R: Kelley Jones (Applicant) v. Service Employees International Union, Local 204 (Respondent) v. 794641 Ontario Limited o/a T. K.'s Tap & Grill (Intervener)

Unit: "all employees of T. K.'s Tap & Grill, in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (30 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	19

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	2
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	16
Number of ballots segregated and not counted	0

2287-96-R: Loretta Lalonde (Applicant) v. United Steelworkers of America (Respondent) v. Roy Ayranto Sales Ltd. (Intervener)

Unit: "all employees of Roy Ayranto Sales Limited in the City of Sudbury, save and except Supervisors and persons above the rank of Supervisors" (92 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	92
Number of persons who cast ballots	91
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	88
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of ballots marked in favour of respondent	44
Number of ballots marked against respondent	47

2327-96-R: Lyne Roy (Applicant) v. Communications, Energy and Paperworks Union of Canada, Local 102 (Respondent) v. York Mailings Limited (Intervener)

Unit: "all employees of York Mailings Limited in the City of Ottawa, save and except supervisors, persons above the rank of supervisor, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (17 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of ballots marked in favour of respondent	6
Number of ballots marked against respondent	11

APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

2217-96-U: The Corporation of the City of Toronto (Applicant) v. Metropolitan Toronto Civic Employees' Union, Local 43 and Ron Moreau (Respondents) (*Withdrawn*)

2229-96-U: Longlac Wood Industries Inc. (Applicant) v. I.W.A.-Canada, Local 2693, Claude Morrisette, Jean-Guy Serre, Kirk Haggart, Manuel Ranger, Randy Budge, James Garvie (Respondents) (*Granted*)

APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)

2234-96-U: Casey Industrial International, Inc. (Applicant) v. International Brotherhood of Electrical Workers, Local Union 402 Bill Daniels, Gary Hogen and other persons unknown (Respondent) (*Withdrawn*)

2289-96-U: Comstock Canada (Applicant) v. International Union of Operating Engineers, Local 793 and Ty Ferencsik and Ivan Roy (Respondents) (*Withdrawn*)

2310-96-U: Walter & SCI Construction (Canada) Ltd. (Applicant) v. International Union of Operating Engineers, Local 793, and Kaplanis Edward, Representative (Respondent) (*Withdrawn*)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

1171-95-U: Dervent Thompson (Applicant) v. Teamsters Local Union 938 (Respondent) v. Pepsi-Cola Ltd. (Intervener) (*Withdrawn*)

2390-95-U: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. S & S Electric, a Division of 1101370 Ontario Ltd. and Robert Sanscartier, Georges Charbonneau, Benoit Gadouas, Denis Schnupp (Respondents) (*Granted*)

2689-95-U: Ronald Joseph Goodwin (Applicant) v. Foyer Richelieu Welland, Inc. (Respondent) (*Withdrawn*)

3157-95-U: Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Hotel Plaza II (Respondent) (*Withdrawn*)

3442-95-U: Pipe Line Contractors Association of Canada (Applicant) v. International Union of Operating Engineers, Local 793 and Summit Pipeline Services Ltd. (Respondents) v. United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canada and its Locals having pipe line jurisdiction, International Brotherhood of Teamsters and its Locals having pipeline jurisdiction (Interveners) (*Withdrawn*)

3785-95-U: Ellen Lundberg, Vivian Parker and Linda Pugh (Applicant) v. Matthews Hall Teachers' Association (Respondent) v. Matthews Hall (Intervener) (*Dismissed*)

3992-95-U: Catherine Stampe (Applicant) v. Service Employees International Union, Local 204 (Respondent) (*Withdrawn*)

4230-95-U: Peterborough Typographical Union, Local 248 Communications Workers of America, Local 14022 (Applicant) v. Peterborough Examiner (Respondent) (*Withdrawn*)

0224-96-U: United Food and Commercial Workers International Union, Local 175 (Applicant) v. 752310 Ontario Ltd., c.o.b. as Loeb Elmvale Acres (Respondent) (*Endorsed Settlement*)

0488-96-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (Caw-Canada) (Applicant) v. Regional Die Casting Limited (Respondent) (*Granted*)

0566-96-U: Dean S. K. Holmes (Applicant) v. Susan Milton, President of Local 117 O.P.S.E.U., Oxford Regional Centre (Respondents) (*Withdrawn*)

0574-96-U: Mr. Danny McLean (Applicant) v. The Ontario Public Servants Employees Union, Local 248 (Respondent) v. Hamilton-Wentworth Detention Centre (Intervener) (*Dismissed*)

0588-96-U; 0702-96-U: Jacinthe Leduc (Applicant) v. L'Association des infirmières et infirmiers de L'Ontario - Local 193 (Respondent) v. Hôpital General de Hawkesbury (Intervener); Jacinthe Leduc (Applicant) v. Hôpital General de Hawkesbury (Respondent) v. L'Association des infirmières et infirmiers de l'Ontario - Local 193 (Intervener) (*Withdrawn*)

0885-96-U: Catherine Shaubel (Applicant) v. Ontario Public Service Employees Union, Local 214 (Respondent) v. Niagara Child Development Centre (Intervener) (*Withdrawn*)

0912-96-U: Service Employees International Union Local 204 (Applicant) v. Meadowcroft Health Care Management Group and 1107989 Ontario Limited, c.o.b. as Nutra 2000 (Respondents) (*Endorsed Settlement*)

0942-96-U: Canadian Union of Public Employees and its Local 109 (Applicant) v. The Corporation of the City of Kingston (Respondent) (*Withdrawn*)

0954-96-U: Melissa Steidman (Applicant) v. Paragon Protection Ltd. (Respondent) (*Dismissed*)

0989-96-U: Pauline Salo (Applicant) v. Office & Professional Employees International Union, Local 327 (Respondent) v. Dryden Board of Education (Intervener) (*Dismissed*)

1031-96-U: Henry Tomsett and Gregory O'Donnell (Applicant) v. International Brotherhood of Electrical Workers, Ken Woods, Allan Diggon and International Brotherhood of Electrical Workers, Local Union 1788, Local Union No. 1788, International Brotherhood Of Electrical Workers (Respondents) (*Withdrawn*)

1083-96-U; 1084-96-U; 1085-96-U; 1086-96-U; 1087-96-U; 1088-96-U: Patsy Alexander (Applicant) v. Union of Needletrades, Industrial and Textile Employees (Respondent) v. Torfeaco Industries Limited (Intervener); Celida Balda (Applicant) v. Union of Needletrades, Industrial and Textile Employees (Respondent) v. Torfeaco Industries Limited (Intervener); Alpheus Pryce (Applicant) v. Union of Needletrades, Industrial and Textile Employees (Respondent) v. Torfeaco Industries Limited (Intervener); Valerie Anderson (Applicant) v. Union of Needletrades, Industrial and Textile Employees (Respondent) v. Torfeaco Industries Limited (Intervener); Carolina Giancola (Applicant) v. Union of Needletrades, Industrial and Textile Employees (Respondent) v. Torfeaco Industries Limited (Intervener); Kathleen Taylor (Applicant) v. Union of Needletrades, Industrial and Textile Employees (Respondent) v. Torfeaco Industries Limited (Intervener) (*Dismissed*)

1108-96-U: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647 (Applicant) v. Small Fry Snack Foods Inc. (Respondent) (*Dismissed*)

1176-96-U; 2106-96-U: The Ontario Nurses' Association (Applicant) v. The Toronto Hospital (Respondent) v. The Service Employees International Union, Local 204, Canadian Union of Public Employees, Local 2001 and 1744 (Interveners); The Ontario Nurses' Association (Applicant) v. The Toronto Hospital (Respondent) (*Withdrawn*)

1594-96-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Dover Corporation (Canada) Limited, Industrial Division (Respondent) (*Dismissed*)

1612-96-U: Canadian Union of Public Employees (Applicant) v. Manitoulin & District Association for Community Living (Respondent) (*Withdrawn*)

1628-96-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Dover Corporation (Canada) Limited, Industrial Division, Burns International Security Services Limited and Fred Collins (Respondents) (*Withdrawn*)

1631-96-U: Herb Sakamoto (Applicant) v. The Corporation of the City of York and Canadian Union of Public Employees, Local 10 (Respondents) (*Granted*)

1706-96-U: John Kerry Dickinson (Applicant) v. Graphic Communications International Union Local 100 M (Respondent) v. Quebecor Printing Inc. (Intervener) (*Endorsed Settlement*)

1727-96-U: The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 221 (Applicant) v. Ian Martin Limited (Respondent) v. Dupont Canada Incorporated, Independent Nylon Workers' Union (KINWU) (Interveners) (*Withdrawn*)

1757-96-U: Labourers' International Union of North America, Local 183 (Applicant) v. Waterford Building Maintenance Incorporated, City of Scarborough Joe de Melo David Anstey (Respondents) (*Withdrawn*)

1883-96-U: Borisa Kapor (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Respondent) v. Hayes-Dana Inc. (Intervener) (*Dismissed*)

1951-96-U: United Food and Commercial Workers International Union, Local 175 & 633 (Applicant) v. Allied Distributors Limited c.o.b. as Harper's Wholesale (Respondent) (*Withdrawn*)

1961-96-U: Richard Colombe (Applicant) v. Coco Paving, Teamsters Local 880 & 973 (Respondents) (*Withdrawn*)

1986-96-U: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Stone Electric Inc., Rand-Mar Electric Company Ltd., Gary Dresher and Bob McMullin (Respondents) (*Endorsed Settlement*)

2036-96-U: Aquiles Vergara (Applicant) v. CAW-Canada, Local 385 (Respondent) (*Withdrawn*)

2037-96-U: Canadian Union of Public Employees, Local 3931 (Applicant) v. Ottawa Regional Hospital Linen Services Inc. (Respondent) (*Withdrawn*)

2047-96-U: The Custodian, Board Employee Victor Mazarello (Applicant) v. Durham Region Roman Catholic Separate School Board (Respondent) (*Withdrawn*)

2058-96-U: United Food and Commercial Workers International Union (Applicant) v. 1171616 Ontario Limited c.o.b as Robinson's, Your Independent Grocer (Respondent) (*Withdrawn*)

2088-96-U: Canadian Union of Public Employees and its Local 3721 (Applicant) v. Marianhill (Respondent) (*Withdrawn*)

2117-96-U: Ontario Public Service Employees Union (Applicant) v. Royal Ottawa Health Care Group (Respondent) (*Withdrawn*)

2259-96-U: Service Employees International Union, Local 204 (Applicant) v. David Johnson (Respondent) (*Terminated*)

2279-96-U: Ray Peters (Applicant) v. Jack Devries Committee Chairperson United Steelworkers of America Local 4906 (Respondent) (*Dismissed*)

2286-96-U: Vahid Hayati (Applicant) v. RW (Retail Wholesale Canada) (Respondent) (*Dismissed*)

2288-96-U: Hilario Badia (Applicant) v. Sam Di Tomasso, Peter Lears, Joe Donalson (Respondent) (*Dismissed*)

2380-96-U: Terry Coulter (Applicant) v. Teamsters, Chauffeurs Warehousemen and Helpers Union, Local No. 880 (Respondent) (*Dismissed*)

2445-96-U: Moses Arjoon (Applicant) v. Communications, Energy and Paper Worker Union of Canada, Sommerville Packaging (Respondents) (*Dismissed*)

2508-96-U: United Food and Commercial Workers International Union, Local 1000A (Applicant) v. Nor Baker Inc. (Respondent) (*Withdrawn*)

2558-96-U: Bryan Hines (Applicant) v. Canadian Union of Postal Workers (Respondent) (*Dismissed*)

2593-96-U: IWA - Canada (Applicant) v. Pizza Hut (721458 Ontario Limited) (Respondent) (*Withdrawn*)

2641-96-U: International Union United Automobile Aerospace & Agricultural Implement Workers of America, (UAW-CLC) and its Local 251 (Applicant) v. St. Clair Technologies (Respondent) (*Dismissed*)

2684-96-U: Richard St. Louis (Applicant) v. International Brotherhood of Painters and Allied Trade (Respondent) (*Dismissed*)

APPLICATIONS FOR RELIGIOUS EXEMPTION

0756-96-M: Susan Ivanovics (Applicant) v. SEIU #532 (Trade Union) v. Heritage Green Nursing Home (Employer) (*Withdrawn*)

2149-96-M: Dr. Zack Cernovsky (Applicant) v. Ontario Public Service Employees Union (OPSEU) and Ministry of Health, Province of Ontario (Respondents) (*Withdrawn*)

FINANCIAL STATEMENT

1854-96-M: Robert Elliott (Applicant) v. International Brotherhood of Painters and Allied Trades, Local Union 1795, (Glaziers) (Respondent) (*Withdrawn*)

JURISDICTIONAL DISPUTES

0218-95-JD: The Millwright District Council of Ontario (Applicant) v. Western Mechanical Electrical Millwright Services Ltd. and United Association of Journeymen and Apprentices of The Plumbing and Pipe Fitting Industry of The United States and Canada, Local Union 599 (Respondents) (*Withdrawn*)

3447-95-JD: Ontario Sheet Metal Workers' & Roofers' Conference Sheet Metal Workers' International Association, Local 539 (Applicant) v. Ontario Allied Construction Trades Council, International Association of Heat and Frost Insulators and Asbestos Workers, Local 95, Electrical Power Systems Construction Association, Qtech Limited (Respondents) (*Granted*)

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

0690-96-M: Ontario Public Service Employees Union (Applicant) v. Family Service Association of Metropolitan Toronto (Respondent) (*Withdrawn*)

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

4105-94-OH: James Slack (Applicant) v. Ministry of the Solicitor General and Correctional Services (Respondent) (*Withdrawn*)

1189-96-OH: Thanienayagam Antonypillai (Applicant) v. YMCA of Greater Toronto (Respondent) (*Withdrawn*)

1418-96-OH: Erskin Turpin (Applicant) v. Toronto District Heating Corporation (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener) (*Dismissed*)

1482-96-OH: Satia Rajah (Applicant) v. Delta Chelsea Inn (Respondent) (*Dismissed*)

2573-96-OH: Karl Evan Morris (Applicant) v. Marko Jaic Holdings Ltd. (Respondent) (*Dismissed*)

COLLEGES COLLECTIVE BARGAINING ACT

1775-96-U: OPSEU Local 110 (Applicant) v. Fanshawe College of Applied Arts and Technology (Respondent) (*Withdrawn*)

CONSTRUCTION INDUSTRY GRIEVANCES

4368-94-G: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 599 (Applicant) v. Western Mechanical Electrical Millwright Services Ltd. (Respondent) v. Millwright District Council of Ontario (Intervener) (*Withdrawn*)

1935-95-G; 2253-95-G: International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Q-Tech Refractory and Insulation Contractors (Respondent); Ontario Allied Construction Trades Council and International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Q-Tech Refractory and Insulation Contractors, Electrical Power Systems Construction Association (Respondents) (*Withdrawn*)

2389-95-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. S & S Electric, a Division of 1101370 Ontario Ltd. (Respondent) (*Granted*)

2932-95-G: Sheet Metal Workers' International Association, Local 473 (Applicant) v. Jiffy Cleat Co. and J.R. Robertson Construction Steel Service Ltd. (Respondents) (*Withdrawn*)

3471-95-G: International Brotherhood of Painters and Allied Trades, Local 1819 (Applicant) v. Magnum Associates Ltd., Hardie Glass & Aluminum Inc., Magnum Glass Inc., Magnum Glass Installations Ltd. (Respondents) (*Withdrawn*)

0078-96-G; 0079-96-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Cablecom International Network Cabling Inc. (Respondent) (*Withdrawn*)

0341-96-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Bonavista Sheet Metal Ltd., A.P. Sheet Metal and Mechanical Ventilation ('A.P. Ventilation') (Respondents) (*Endorsed Settlement*)

0371-96-G: International Union of Operating Engineers, Local 793 (Applicant) v. James Kemp Construction Ltd. (Respondent) (*Granted*)

0915-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. Nu-Line Contracting Inc. (Action Masonry) (Respondent) (*Granted*)

1035-96-G: International Association of Bridge, Structural and Ornamental Iron Workers, Local 765 (Applicant) v. Cota Steel Ltd. (Respondent) (*Withdrawn*)

1098-96-G; 1416-96-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Newtown Mechanical Contractors Ltd. and Nortown Plumbing Ltd. (Respondents); United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States And Canada, Local Union 46 (Applicant) v. Newtown Mechanical Contractors Ltd. (Respondent) (*Endorsed Settlement*)

1394-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. Sanvilla General Construction Ltd. (Respondent) (*Endorsed Settlement*)

1649-96-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Duffy Mechanical Contractors Limited (Respondent) (*Withdrawn*)

1675-96-G: Bricklayers, Masons Independent Union of Canada, Local 1 (Applicant) v. Petrolo D. Masonry Ltd. (Respondent) (*Withdrawn*)

1703-96-G: International Brotherhood of Painters and Allied Trades Local 1795 (Glaziers) (Applicant) v. Neucor Glass & Mirror Ltd. and Modern Glass & Mirror Ltd. (Respondents) (*Granted*)

1713-96-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Black & McDonald Limited (Respondent) (*Granted*)

1805-96-G: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Applicant) v. Ontario Hydro, Electrical Power Systems Construction Association (Respondents) (*Granted*)

1808-96-G: Labourers' International Union of North America, Local 607 (Applicant) v. Di-Tech Wire Sawing Systems, Inc. (Respondent) (*Withdrawn*)

1855-96-G: International Brotherhood of Painters and Allied Trades District Council 46 (Applicant) v. Lesniewski Painting Ltd. (Respondent) (*Granted*)

1941-96-G: Sheet Metal Workers' International Association, Local 562 (Applicant) v. Coolbreeze Air Conditioning/Ductmaster Industries (Respondent) (*Withdrawn*)

1979-96-G: Labourers' International Union of North America, Local 183 (Applicant) v. 972132 Ontario Ltd. o/a York Concrete Forming (Respondent) (*Granted*)

1988-96-G; 1989-96-G; 1990-96-G; 1991-96-G: International Union of Operating Engineers, Local 793 (Applicant) v. All-Canada Crane Rental Corp. (Respondent) (*Withdrawn*)

2000-96-G: United Brotherhood of Carpenters and Joiners of America Local Union 785 (Applicant) v. Losereit Limited (Respondent) (*Granted*)

2001-96-G: United Brotherhood of Carpenters and Joiners of America Local Union 785 (Applicant) v. Losereit Limited (Respondent) (*Granted*)

2023-96-G: United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. The Cooler Guys Inc. (Respondent) (*Endorsed Settlement*)

2033-96-G: International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Centennial Electric Limited (Respondent) (*Granted*)

2051-96-G: International Union of Bricklayers and Allied Craftsmen, Local 5 (Applicant) v. Franklin Floor Systems (Respondent) (*Granted*)

2063-96-G: United Brotherhood of Carpenters and Joiners of America Local Union 785 (Applicant) v. Martek Drywall & Accoustic (Respondent) (*Withdrawn*)

2065-96-G: United Brotherhood of Carpenters and Joiners of America Local Union 785 (Applicant) v. John Paul Construction (Respondent) (*Withdrawn*)

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A Monthly Series of Decisions from the
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Selected decisions of particular reference value are
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- Abandonment - Bargaining Rights - Conciliation - Construction Industry - Reference - Union certified in 1984 to represent construction labourers in ICI sector and all other sectors - Union subsequently entering into collective agreements covering labourers engaged in road and bridge building construction projects - Union in 1996 seeking to negotiate collective agreement covering labourers in other sectors - Employer asserting that it has not been active outside road and bridges construction and ICI sector - Employer objecting to appointment of conciliation officer in relation to bargaining for bargaining unit covering labourers in other sectors - Board finding no abandonment of bargaining rights and advising Minister of Labour that she has authority to make requested appointment of conciliation officer
- JOHN HAYMAN & SONS COMPANY LIMITED, THE; RE LIUNA, LOCAL 1059(Nov./Dec.) 945
- Abandonment - Bargaining Rights - Constitutional Law - Construction Industry - Construction Industry Grievance - Judicial Review - Board finding constitutional issue raised by employer to be *res judicata* - Fact that there was little contact between union and employer or its employees, or fact that grievances were not filed in all instances of violation of collective agreement (in absence of unambiguous evidence that union knew or reasonably ought to have known of those violations and did nothing) insufficient to warrant finding that union abandoned bargaining rights - Board finding that essential elements of estoppel established in relation to both conduct of local union filing grievance and the employee bargaining agency and other ABAs holding bargaining rights for employer's employees - Board deciding that notice bringing estoppel to an end coming with Board's decision - Board dismissing grievance but declaring that employer bound to recognize union's bargaining rights and bound to existing provincial agreement - Employer's application for judicial review dismissed by Divisional Court
- TORONTO-DOMINION BANK, THE; RE CJA, LOCAL 785 AND THE OLRB..(Sept./Oct.) 903
- Abandonment - Bargaining Rights - Construction Industry Grievance - Board reviewing its approach where abandonment of bargaining rights alleged, including onus of proof and circumstances requiring that onus shift, standard of proof necessary to establish abandonment, and significance of union's "intent" - Parties agreeing that union never intended to abandon ICI bargaining rights - In this case, Board not satisfied that Bricklayers' union abandoned its bargaining rights with respondent general contractor
- G.S. WARK LIMITED; RE BRICKLAYERS' & MASONS' UNION NO. 1, ONTARIO OF THE INTERNATIONAL UNION OF BRICKLAYERS & ALLIED CRAFTSMEN; RE CONSTRUCTION WORKERS LOCAL 6, AFFILIATED WITH THE CLAC.....(Sept./Oct.) 811
- Adjournment - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Practice and Procedure - Remedies - Unfair Labour Practice - Board not satisfied that medical evidence justifying employer's inability to attend at Board hearing - Adjournment request denied - Board finding employer's threats to close business and subsequent layoff of employees in violation of the Act - Union certified under section 11(1) of the Act
- BALKAN GLASS & ALUMINUM INC.; RE PAT, LOCAL UNION 1819 (GLAZIERS).....(Sept./Oct.) 717
- Adjournment - Judicial Review - Natural Justice - Reconsideration - Related Employer - Remedies - Board declaring that some 128 associates of three taxi brokers, together with each of their respective brokers, should be treated as one employer for purposes of the Act - Board making additional orders and directions in accordance with earlier agreement made between union, brokers and group of 47 associates setting up bargaining infrastructure and giving associates

formal role in negotiating process - Divisional Court dismissing application for judicial review alleging that decision patently unreasonable and that applicants were denied natural justice

PETER'S TAXI LIMITED, SANDRA MANDRONIS, MATINA MANDRONIS, NORTH-LAND TAXI AND SAHIB SINGH GHAI, CARL ROTMAN, NOAH ROTMAN, 896896 ONTARIO LTD. O/A LAKESHORE GARAGE, CHRIS CHRONOPOULOS,; RE THE ONTARIO LABOUR RELATIONS BOARD AND RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCAL 1688.....(Sept./Oct.)

902

Alteration of Jurisdiction - Construction Industry - Parties - Practice and Procedure - Unfair Labour Practice - IBEW Local ("Local 1788") alleging that IBEW (the "International") altering its jurisdiction without just cause contrary to Bill 80 amendments to the Act - Board granting standing to IBEW Electrical Power Systems Construction Council of Ontario, various locals of IBEW, EPSCA, and Ontario Hydro and denying standing to IBEW Construction Council of Ontario and to Electrical Contractors Association of Ontario - Board directing applicant Local 1788 to call its evidence first - On the merits, Board determining that International had altered Local 1788's jurisdiction as alleged, but that it had just cause to do so - Board satisfied that alteration of jurisdiction likely to facilitate viable and stable collective bargaining without causing serious labour relations problems - Application dismissed

IBEW; RE IBEW LOCAL 1788; RE THE IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO AND IBEW, LOCAL UNIONS 105, 115, 120, 303, 402, 530, 586, 773, 804, 894, 1687 AND 1739; EPSCA AND ONTARIO HYDRO; IBEW, LOCAL 353.....(Feb.)

70

Arbitration - Construction Industry - Construction Industry Grievance - Grievance delivered to employer and referred to arbitration well beyond time limits contained in collective agreement - While union offering explanation for delay in filing grievance, no explanation given for 8 1/2 month delay in referring grievance to arbitration - Board not satisfied that reasonable grounds existing to extend time limits in collective agreement - Grievance dismissed

ZENTIL PLUMBING & HEATING CONTRACTING LTD.; UA, LOCAL UNION 46..(Feb.)

178

Bargaining Rights - Abandonment - Conciliation - Construction Industry - Reference - Union certified in 1984 to represent construction labourers in ICI sector and all other sectors - Union subsequently entering into collective agreements covering labourers engaged in road and bridge building construction projects - Union in 1996 seeking to negotiate collective agreement covering labourers in other sectors - Employer asserting that it has not been active outside road and bridges construction and ICI sector - Employer objecting to appointment of conciliation officer in relation to bargaining for bargaining unit covering labourers in other sectors - Board finding no abandonment of bargaining rights and advising Minister of Labour that she has authority to make requested appointment of conciliation officer

JOHN HAYMAN & SONS COMPANY LIMITED, THE; RE LIUNA, LOCAL 1059.....(Nov./Dec.)

945

Bargaining Rights - Abandonment - Constitutional Law - Construction Industry - Construction Industry Grievance - Judicial Review - Board finding constitutional issue raised by employer to be *res judicata* - Fact that there was little contact between union and employer or its employees, or fact that grievances were not filed in all instances of violation of collective agreement (in absence of unambiguous evidence that union knew or reasonably ought to have known of those violations and did nothing) insufficient to warrant finding that union abandoned bargaining rights - Board finding that essential elements of estoppel established in relation to both conduct of local union filing grievance and the employee bargaining agency and other ABAs holding bargaining rights for employer's employees - Board deciding that notice bringing estoppel to an end coming with Board's decision - Board dismissing grievance but declaring

that employer bound to recognize union's bargaining rights and bound to existing provincial agreement - Employer's application for judicial review dismissed by Divisional Court

TORONTO-DOMINION BANK, THE; RE CJA, LOCAL 785 AND THE OLRB..(Sept./Oct.) 903

Bargaining Rights - Abandonment - Construction Industry Grievance - Board reviewing its approach where abandonment of bargaining rights alleged, including onus of proof and circumstances requiring that onus shift, standard of proof necessary to establish abandonment, and significance of union's "intent" - Parties agreeing that union never intended to abandon ICI bargaining rights - In this case, Board not satisfied that Bricklayers' union abandoned its bargaining rights with respondent general contractor

G.S. WARK LIMITED; RE BRICKLAYERS' & MASONS' UNION NO. 1, ONTARIO OF THE INTERNATIONAL UNION OF BRICKLAYERS & ALLIED CRAFTSMEN; RE CONSTRUCTION WORKERS LOCAL 6, AFFILIATED WITH THE CLAC.....(Sept./Oct.) 811

Bargaining Rights - Certification - Construction Industry - Practice and Procedure - Sale of a Business - Related Employer - Responding employer asking Board to bar union's sale of a business and related employer applications filed while certification application pending in connection with same employer - Employer's request dismissed

MAGNUM GLASS INC., MAGNUM ASSOCIATES LTD., MAGNUM GLASS INSTALLATIONS LTD., HARDIE GLASS & ALUMINUM INC.; RE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES AND THE ONTARIO COUNCIL OF INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES.....(Feb.) 95

Bargaining Rights - Construction Industry - Construction Industry Grievance - Related Employer - Sale of a Business - Board holding that Ontario Provincial Conference (OPC) designation for tile and terrazzo workers limits OPC's representation rights to journeymen and apprentice marble, tile, terrazzo, cement masons, resilient floor layers and their helpers for whom OPC, one of the specified locals, or a subsequently chartered local has bargaining rights - Board not accepting that sub-contracting clause in provincial bricklayers' agreement requiring contractors bound to the agreement to sub-contract work covered by provincial marble, tile and terrazzo agreement to contractor bound by such agreement - Board accordingly determining that responding parties not bound to provincial marble, tile and terrazzo agreement, nor are they required by provincial bricklayers' agreement to subcontract tile and terrazzo work to contractor bound by provincial bricklayers' agreement or provincial, marble tile and terrazzo agreement

DINEEN CONSTRUCTION CONSTRUCTION LIMITED, MITCHELL CONSTRUCTION LIMITED, BUTTCON LIMITED, M.A. BUTT CONSTRUCTION LIMITED, M.A. BUTT CONSTRUCTION (1983) LIMITED; RE ONTARIO PROVINCIAL CONFERENCE OF BRICKLAYERS AND ALLIED CRAFTSMEN AND BAC, LOCAL 2, ONTARIO AND MARBLE TILE & TERRAZZO UNION, LOCAL 31; RE TERRAZZO, TILE & MARBLE GUILD OF ONTARIO, INC.....(July/Aug.) 610

Bargaining Unit - Certification - Board directing representation vote in voting constituency after considering bargaining unit descriptions proposed by union in its application and by employer in its response - Following vote direction, employer seeking to change its position on appropriate bargaining unit and proposing a larger unit - Board declining to change vote direction and leaving issue of appropriate bargaining unit to be determined at hearing following vote - Eleven of twelve ballots cast in favour of union representation - Board ruling that employer bound by bargaining unit described in its response

ST. ELIZABETH HEALTH CARE - DURHAM REGION; RE PRACTICAL NURSES FEDERATION OF ONTARIO; RE ONA(Nov./Dec.) 1008

Bargaining Unit - Certification - Judicial Review - IPC seeking to displace CEP Local 338 as bargaining agent for certain maintenance employees of paper mill - CEP Locals 212 and 338 asserting that established bargaining structure involving single bargaining unit including all

maintenance and production employees, and that IPC should not be allowed to carve out bargaining unit from existing structure - Board finding that established bargaining structure was one bargaining unit and dismissing IPC's application - IPC's application for judicial review dismissed by Divisional Court

DOMTAR INC. COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, C.L.C. LOCAL 212 AND 338 AND THE OLRB; RE INDEPENDENT PAPERWORKERS OF CANADA(Jan.)

53

Bargaining Unit - Certification - Practice and Procedure - Board explaining new procedure for resolution of "status" disputes in connection with certification applications - Union and employer agreeing to bargaining unit descriptions excluding office and clerical staff - Parties disputing whether "receptionists" falling within exclusion - In view of parties' agreement on bargaining unit description, Board declining to consider whether including receptionists in bargaining units would create serious labour relations problems - Board also observing that parties should question some long standing assumptions and exclusions traditionally agreed to automatically regarding bargaining units - Board finding receptionists included in office and clerical exclusion and therefore excluded from bargaining units - Certificates issuing

MCGILL CLUB, THE; RE SEIU, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L. C.I.O., C.L.C.(Sept./Oct.)

877

Bargaining Unit - Certification - Practice and Procedure - Subsequent to representation vote in certification application objecting, employees writing to Board to assert that they should not be included in the bargaining unit - Objecting employees raising community of interests concerns - Board concluding that objecting employees raising no allegations which, even if proved true, would change result of application - Accordingly, Board issuing final decision without a hearing - Certificate issuing

BASF CANADA INC.; RE COMMUNICATIONS, ENERGY & PAPERWORKERS UNION OF CANADA (CEP) (May/June)

335

Bargaining Unit - Certification - Subsequent to taking of representation vote (in which more than 50 percent of ballots cast were cast in favour of union), certain employees writing to Board expressing concern that maintenance employees ought not to be included in bargaining unit with production employees as agreed to by employer and union - Board satisfied that employees' representations raising no allegations which would change result of application - Board issuing final decision without a hearing - Certificate issuing

MANAC, A DIVISION OF THE CANAM MANAC GROUP INC.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)(Jan.)

16

Bargaining Unit - Certification - Union seeking to represent bargaining unit of secretaries employed by hospital - Hospital asserting that proposed bargaining unit not appropriate and arguing that the secretaries at issue should be treated as part of larger bargaining unit of clerical employees - Board finding that union's proposed unit not appropriate - Certification application dismissed

UNIVERSITY HOSPITAL; RE USWA (July/Aug.)

694

Bargaining Unit - Combination of Bargaining Units - Nursing home employer applying under Bill 7 transition provisions to "de-combine" bargaining units including full-time and part-time workers - Board reviewing its pre-Bill 40 policy in respect of part-time employees in wake of test in *Hospital for Sick Children* case and subsequent jurisprudential developments - Board not satisfied that assertions about lack of community of interest between full and part-time employees ought to continue to be elevated to level of labour relations axiom - Board rejecting argument that it ought to return to practice whereby part-time employees automatically excluded from full-time bargaining units on the request of a party - In case before it, Board

satisfied that existing units appropriate because community of interest existing between full-time and part-time employees - Application dismissed	
CARESSANT CARE NURSING HOME OF CANADA LIMITED; RE CUPE, LOCAL 2225.09(Sept./Oct.)	748
Bargaining Unit - Construction Industry - Employee - Grievance - Termination - Board ruling that non-ICI collective agreement between employer and Labourers' union not covering work performed in the "yard" on the termination application date - Accordingly, Board determining that no one working in bargaining unit on application date - Termination application dismissed	
GAVIGAN CONTRACTING LTD.; RE LIUNA, LOCAL 1059(May/June)	405
Bargainint Unit - Certification - Union seeking to represent bargaining unit of food and beverage staff at golf club, and to exclude from unit pro shop staff and grounds maintenance employees - Board finding that golf club operating as integrated enterprise and that lines dividing work of the various group blurred - Union's proposed bargaining unit held not appropriate - Application withdrawn with leave of the Board	
LIONHEAD GOLF & COUNTRY CLUB, DIVISION OF KANEFF PROPERTIES LIMITED; RE UFCW, LOCAL 206 CHARTERED BY THE UFCW CLC, AFL-CIO(Mar./Apr.)	271
Certification - Adjourment - Certification Where Act Contravened - Construction Industry - Discharge - Practice and Procedure - Remedies - Unfair Labour Practice - Board not satisfied that medical evidence justifying employer's inability to attend at Board hearing - Adjourment request denied - Board finding employer's threats to close business and subsequent layoff of employees in violation of the Act - Union certified under section 11(1) of the Act	
BALKAN GLASS & ALUMINUM INC.; RE PAT, LOCAL UNION 1819 (GLAZIERS)(Sept./Oct.)	717
Certification - Bargaining Rights - Construction Industry - Practice and Procedure - Sale of a Business - Related Employer - Responding employer asking Board to bar union's sale of a business and related employer applications filed while certification application pending in connection with same employer - Employer's request dismissed	
MAGNUM GLASS INC., MAGNUM ASSOCIATES LTD., MAGNUM GLASS INSTALLATIONS LTD., HARDIE GLASS & ALUMINUM INC.; RE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES AND THE ONTARIO COUNCIL OF INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES(Feb.)	95
Certification - Bargaining Unit - Board directing representation vote in voting constituency after considering bargaining unit descriptions proposed by union in its application and by employer in its response - Following vote direction, employer seeking to change its position on appropriate bargaining unit and proposing a larger unit - Board declining to change vote direction and leaving issue of appropriate bargaining unit to be determined at hearing following vote - Eleven of twelve ballots cast in favour of union representation - Board ruling that employer bound by bargaining unit described in its response	
ST. ELIZABETH HEALTH CARE - DURHAM REGION; RE PRACTICAL NURSES FEDERATION OF ONTARIO; RE ONA(Nov./Dec.)	1008
Certification - Bargaining Unit - Judicial Review - IPC seeking to displace CEP Local 338 as bargaining agent for certain maintenance employees of paper mill - CEP Locals 212 and 338 asserting that established bargaining structure involving single bargaining unit including all maintenance and production employees, and that IPC should not be allowed to carve out bargaining unit from existing structure - Board finding that established bargaining structure	

was one bargaining unit and dismissing IPC's application - IPC's application for judicial review dismissed by Divisional Court

DOMTAR INC. COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, C.L.C. LOCAL 212 AND 338 AND THE OLRB; RE INDEPENDENT PAPERWORKERS OF CANADA(Jan.)

53

Certification - Bargaining Unit - Practice and Procedure - Board explaining new procedure for resolution of "status" disputes in connection with certification applications - Union and employer agreeing to bargaining unit descriptions excluding office and clerical staff - Parties disputing whether "receptionists" falling within exclusion - In view of parties' agreement on bargaining unit description, Board declining to consider whether including receptionists in bargaining units would create serious labour relations problems - Board also observing that parties should question some long standing assumptions and exclusions traditionally agreed to automatically regarding bargaining units - Board finding receptionists included in office and clerical exclusion and therefore excluded from bargaining units - Certificates issuing

MCGILL CLUB, THE; RE SEIU, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L. C.I.O., C.L.C.(Sept./Oct.)

877

Certification - Bargaining Unit - Practice and Procedure - Subsequent to representation vote in certification application objecting, employees writing to Board to assert that they should not be included in the bargaining unit - Objecting employees raising community of interests concerns - Board concluding that objecting employees raising no allegations which, even if proved true, would change result of application - Accordingly, Board issuing final decision without a hearing - Certificate issuing

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16

Certification - Bargaining Unit - Union seeking to represent bargaining unit of secretaries employed by hospital - Hospital asserting that proposed bargaining unit not appropriate and arguing that the secretaries at issue should be treated as part of larger bargaining unit of clerical employees - Board finding that union's proposed unit not appropriate - Certification application dismissed

UNIVERSITY HOSPITAL; RE USWA.....(July/Aug.)

694

Certification - Bargainint Unit - Union seeking to represent bargaining unit of food and beverage staff at golf club, and to exclude from unit pro shop staff and grounds maintenance employees - Board finding that golf club operating as integrated enterprise and that lines dividing work of the various group blurred - Union's proposed bargaining unit held not appropriate - Application withdrawn with leave of the Board

LIONHEAD GOLF & COUNTRY CLUB, DIVISION OF KANEFF PROPERTIES LIMITED; RE UFCW, LOCAL 206 CHARTERED BY THE UFCW CLC, AFL-CIO(Mar./Apr.)

271

Certification - Board granting "interim" certification to union on November 6, 1995 in connection with certification application made on October 11, 1995 - Bill 7 providing that amended provisions of Labour Relations Act applying retroactively to certification applications filed

after October 4, 1995 in which no "final decision" had yet issued - Board determining that certification decision made on November 6, 1995 a "final decision" for purposes of transitional provisions under Bill 7

DRYDEN DISTRICT ROMAN CATHOLIC SEPARATE SCHOOL BOARD; RE OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION(Jan.)

1

Certification - Certification Where Act Contravened - Interference in Trade Unions - Intimidation and Coercion - Reconsideration - Unfair Labour Practice - Board finding that employer removal of key inside union organizer from workplace and subsequent reassignment tainted by anti-union animus - Board also finding that various steps to increase managerial presence in workplace during organizing campaign coloured by anti-union motivation - Board certifying union under section 9.2 of "old" Labour Relations Act - Employer seeking reconsideration of decision on grounds that "bottom line" decision (without reasons) issued on November 10, 1995 was not "final" decision for purposes of transitional provisions of Bill 7 - Employer submitting that Board ought to have decided case under section 11(1) of "new" Labour Relations Act - Board noting that absence of reasons not undermining dispositive effect of "bottom line" decision and that Bill 7 requiring that "new" Act apply retroactively only where no final decision having issued on November 10, 1995 - Reconsideration application dismissed

SHOPPERS DRUG MART, ASM DISPENSARIES LIMITED C.O.B. AS; RE USWA; RE GROUP OF EMPLOYEES(Mar./Apr.)

303

Certification - Certification Where Act Contravened - Construction Industry - Discharge - Interference in Trade Unions - Intimidation and Coercion - Unfair Labour Practice - Certification application filed under old Labour Relations Act caught by transition provisions of Bill 7 and determined under new Labour Relations Act, 1995 - Board finding that employer violating the Act in discharging union supporter and in circulating questionnaire inquiring about employees' union membership - Board directing that discharged employee be compensated for lost earnings - Board also certifying union under section 11 of the Act

CULLITON BROTHERS LIMITED; RE IBEW, LOCAL 804; RE GROUP OF EMPLOYEES..... (July/Aug.)

593

Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Interference in Trade Unions - Unfair Labour Practice - Board finding that employer violated the Act in promoting an employee association in the face of the union organizing campaign and in indefinitely suspending the lead inside union organizer - Board certifying union under section 11(1) of the Act

BURLINGTON GOLF & COUNTRY CLUB LIMITED; RE CANADIAN UNION OF OPERATING ENGINEERS AND GENERAL WORKERS (July/Aug.)

505

Certification - Certification Where Act Contravened - Interference in Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice - After receiving copy of union's certification application, employer meeting with employees one-to-one and asking them to sign personalized declaration opposing trade union - Employer acting on legal advice and in belief that he was acting in compliance with Board's rules - Only one of five employees subsequently casting ballot in representation vote - Union losing vote - Board setting aside representation vote and directing new vote - Employer directed to cease and desist violating Act, to post decision and attached notice in workplace and to mail copy to each employee at home, and to provide union opportunity to address employees at meeting held during normal working hours - Union's application to be certified under section 11(1) of the Act dismissed

MAVERICK MECHANICAL CONTRACTORS LIMITED; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION.....(Mar./Apr.)

289

Certification - Change in Working Conditions Evidence - Construction Industry - Evidence - Intimidation and Coercion - Practice and Procedure - Representation Vote - Unfair Labour Practice -

Witness - After conducting inquiry into witness's alleged prior inconsistent statement, Board declining to declare witness hostile or adverse - Board concluding that union used charges and threat of charges under its constitution to intimidate employees into supporting certification application - Certification application dismissed under section 11(2) of the Act - Board finding that employer violated statutory freeze when it changed wage rate it had agreed to pay to two employees - Compensation ordered

CENTRO MECHANICAL INC.; RE UA, AND ITS LOCAL 221(Sept./Oct.) 762

Certification - Construction Industry - Board in earlier decision directing second representation vote after declining to count single segregated ballot cast by voter ruled eligible to vote - Union seeking leave to withdraw certification application on day prior to scheduled date of second vote - Board imposing 12 month bar on new certification application by union under section 7(9) of the Act on ground that employees' wishes had been effectively tested and that there ought to be a period of repose

METRIC CONTRACTING SERVICE CORPORATION; RE LIUNA, LOCAL 837(Nov./Dec.) 996

Certification - Construction Industry - Employee - Natural Justice - Reconsideration - Representation Vote - Settlement - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing

B & B ELECTRIC CO. DIVISION OF ELECTROBAUER SYSTEMS LIMITED AND/OR ELECTROBAUER LIMITED; RE IBEW, LOCAL 353.....(Nov./Dec.) 907

Certification - Construction Industry - Employee - Representation Vote - Board not accepting employer's submission that employees not employed on the certification application filing date should be entitled to cast ballots in representation vote - Board finding contested employee to be employed in bargaining unit on application date - Board directing Registrar to have ballots counted in accordance with its decision

KEN ANDERSON ELECTRIC INC.; RE IBEW, LOCAL 402(Sept./Oct.) 846

Certification - Construction Industry - Employer - Judicial Review - Board finding that personnel agencies not the employers of electricians for whom union seeking bargaining rights - Certification applications dismissed - Union's application for judicial review dismissed by Divisional Court

DARE PERSONNEL INC. AND 1092009 ONTARIO INC. C.O.B. PERSONNEL FORCE AND ONTARIO LABOUR RELATIONS BOARD; RE IBEW, LOCAL 586(Nov./Dec.) 1014

Certification - Construction Industry - Employer Support - Unfair Labour Practice - CLAC seeking to displace Sheet Metal Workers' union as employees' bargaining agent - Board concluding

that employer's support of CLAC clear and significant and qualifying as "other support" within meaning of section 15 of the Act - CLAC's application for certification dismissed

COVERTITE EASTERN LIMITED; RE CLAC, LOCAL 52; RE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 47 (May/June) 386

Certification - Construction Industry - Evidence - Termination - Trade Union - Trade Union Status - Unfair Labour Practice - Board dismissing submission that decision in *Canadian Union of Shinglers & Allied Workers* case determinative of issue of employee status of crew leaders in residential roofing industry - *Res judicata* not applying to Board's finding regarding crew leaders in earlier case

DOMINION SHEET METAL & ROOFING WORKS; RE LIUNA, LOCAL 183; RE CANADIAN UNION OF SHINGLERS & ALLIED WORKERS, CJA, LOCAL 27 (Sept./Oct.) 795

Certification - Construction Industry - Reconsideration - Representation Vote - Board rejecting union's request to schedule second representation vote where vote was held five days after filing of application, but on day that employees not scheduled to work and in circumstances where only one of five eligible voters cast ballot - Board not prepared to draw inference that vote not a true reflection of desires of the employees - Reconsideration application dismissed

MAVERICK MECHANICAL CONTRACTORS LIMITED; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION.....(Jan.) 17

Certification - Contempt - Employer Support - Evidence - Membership Evidence - Practice and Procedure - Board rejecting various motions, objections, allegations, requests and submissions made by employer and objecting employees, including objection to composition of the panel, submission that Board without jurisdiction to schedule certification application to be heard on consecutive day basis, allegations of abuse of process and of discrimination made against union, request that Board refuse to entertain application pursuant to section 105(2)(i) of the Act, objection to propriety of Form A-4 and to membership evidence filed by the union, and allegation of employer support for application contrary to section 13 of the Act - Certificate issuing - Board also critical of conduct of objecting employees' counsel and employer's counsel - Counsels' conduct throughout proceeding described as rude, interruptive, and intentionally disrespectful to tribunal - Counsel directed to attend before the Board to show cause why Board ought not to state case of contempt to Divisional Court or report counsels' conduct to Law Society of Upper Canada

ROBERT M. HEENAN SALES LTD., AND ROBERT M. HEENAN, VIC MURAI HOLDINGS LTD. VIC MURAI; RE UFCW, LOCAL 175..... (Feb.) 106

Certification - Contempt - Practice and Procedure - Board, in earlier decision, critical of conduct of objecting employees' counsel and employer's counsel - Counsel, in earlier decision, directed to attend before Board to show cause why Board ought not to state case of contempt to Divisional Court or report counsels' conduct to Law Society of Upper Canada - Counsel submitting letter of apology prior to show cause hearing - Board accepting counsels' apologies but not explanations or justifications offered for their conduct - Board concluding that show cause hearing unnecessary - Proceeding terminated

ROBERT M. HEENAN SALES LTD.; RE UFCW; RE GROUP OF EMPLOYEES (Feb.) 153

Certification - Employee - Judicial Review - Board finding that thirteen lead hands employed at employer's production facility exercising managerial functions and not "employees" for purposes of the Act - Certificate issuing - Employer seeking expedited judicial review of Board's decision before single judge - Court denying leave under section 6(2) of Judicial Review Procedure Act to have application heard by single judge - Application transferred to Divisional Court

GOURMET BAKER INC.; RE THE UNITED STEELWORKERS OF AMERICA AND THE ONTARIO LABOUR RELATIONS BOARD (Nov./Dec.) 1015

- Certification - Employer Support - Evidence - Intimidation and Coercion - Judicial Review - Natural Justice - Practice and Procedure - Employer's allegations of unlawful employer support for certification application and unlawful intimidation of employees dismissed by Board for disclosing no *prima facie* case - Employer applying for judicial review on several grounds including alleged denial of natural justice - Application for judicial review dismissed by Divisional Court
- J.P. MURPHY INC.; RE ONTARIO (ONTARIO LABOUR RELATIONS BOARD) AND USWA.....(Jan.) 54
- Certification - Evidence - Judicial Review - Trade Union - Trade Union Status - Steelworkers' union applying for certification at workplace with employees' association - Union arguing that association not a "trade union" within meaning of the Act and that Board should certify Steelworkers' without representation vote - Employees' association having twenty-year history of negotiating agreements with employer setting out terms and conditions of employment, but association having no constitution and no members - Board finding that association not a trade union - Certificate issuing - Employer applying for judicial review and alleging that Board's decision patently unreasonable and based on findings of fact for which there was no evidence - Application for judicial review dismissed by Divisional Court
- KUBOTA METAL CORPORATION FAHRAMET DIVISION; RE USWA AND ONTARIO LABOUR RELATIONS BOARD..... (May/June) 504
- Certification - Evidence - Practice and Procedure - Union winning representation vote but employer asserting that certificate should not issue - Employer submitting that Board mistakenly determined that there was appearance of more than 40% union support and that vote should not have been directed - Board rejecting employer's argument and affirming its practice under Bill 7 of looking only at information provided by union with its application when determining existence of appearance of 40% support - Board also explaining its inclination, where possible, to count ballots so that "quick votes" under Bill 7 are followed by quick results - Certificate issuing
- CORPORATION OF CITY OF TORONTO ("THE EMPLOYER"); RE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79 ("THE UNION" OR "CUPE")..... (July/Aug.) 552
- Certification - Intimidation and Coercion - Representation Vote - Union winning representation vote but employer seeking dismissal of certification application under section 11(2) of the Act - Employer alleging that union official accosted voters outside as they approached building to cast ballots in representation vote - Employer submitting that such conduct depriving employees of ability to freely express true wishes - Board rejecting employer's submission - Certificate issuing
- CITIPARK INC.; RE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C..... (May/June) 367
- Certification - Labour Relations Act not applying to full-time firefighters - Board not accepting employer's argument that union's certification application should be dismissed because its employees are full-time fire-fighters within meaning of Fire Departments Act - Board not satisfied that employer's employees assigned exclusively to fire protection or fire prevention duties
- ALARM CONTROL CENTER INC.; RE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS(Nov./Dec.) 905
- Certification - Membership Evidence - Reconsideration - Board applying decision in Famous Players case and allowing employers' reconsideration request respecting seven certification decisions issued prior to October 4, 1995 on ground that membership evidence filed by the union was defective - Board revoking certificates - Board finding membership evidence filed in two other

certification applications satisfactory and dismissing reconsideration request with respect to those applications

CINEPLEX ODEON CORPORATION; RE IATSE.....(Nov./Dec.) 922

Certification - Practice and Procedure - Reconsideration - Union withdrawing first certification application after receiving response from employer listing seven office staff on list of employees and after employer opposing union's request to amend its application by excluding office and clerical staff from proposed bargaining unit - Board granting union leave to withdraw without a bar - Union filing second application and proposing bargaining unit excluding office and clerical staff - Employer objecting - Board directing representation vote - Employer applying for reconsideration of decision permitting union to withdraw first application without a bar - Board rejecting employer's submission that Bill 7 amendments to Act imposing mandatory, rather than discretionary, bar following withdrawn applications - Board noting that inconvenience of employer in responding to certification application that is subsequently withdrawn not amounting to prejudice and not justifying imposition of bar - Board also recognizing that subsequent certification application may be based on information union had gained from first withdrawn application, but seeing nothing improper in this - In circumstances where wishes of employees not tested with certainty and union is not abusing Board's process, Board identifying no need to impose bar - Reconsideration application dismissed - Certificate

SARA LEE BAKERY CANADA; RE USWA.....(May/June) 480

Certification - Practice and Procedure - Representation Vote - International union's previous certification application dismissed and one year bar imposed - Local of international union applying for certification six months later - Employer submitting that local union's application covered by the bar and that application should be dismissed - Employer asking that ballot box be sealed pending determination of the issue - Board declining to direct that ballot box be sealed - Board noting practical advantage of counting ballots in determining whether necessary to decide bar issue raised by employer

K-MART CANADA LIMITED; RE UFCW(Nov./Dec.) 950

Certification - Practice and Procedure - Representation Vote - Security Guard - Employer objecting to union certification application under section 14(2) of the Act on basis that union admits to membership persons who are not guards - Employer requesting that ballot box be sealed - Board determining not to seal ballot box, but that employer's objection under section 14(2) of the Act should be considered by Board at hearing scheduled for application

B. A. BANKNOTE, A DIVISION OF QUEBECOR PRINTING INC.; RE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS.....(Nov./Dec.) 906

Certification - Practice and Procedure - Representation Vote - Security Guards - Timeliness - USWA and CSU each filing application to displace UPGW as bargaining agent for security guard employees of employer - Board concluding that USWA's first application filed day before commencement of last two months of UPGW collective agreement's operation and, therefore, untimely - USWA filing subsequent application on same day as CSU - Board distinguishing *Carleton Board of Education* case and exercising its discretion under section 111(3) of the Act to process the two applications together - Board finding that USWA and CSU each appearing to enjoy membership support of at least 40% in their proposed bargaining units - Board directing three-way representation vote - Board rejecting request to postpone vote until hearing into various "40% threshold" assertions or allegations concerning conflicts of interest resulting from applicant unions becoming certified - Board explaining its practice concerning how, when and on what information it determines that a representation vote should be ordered in certification applications

BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE USWA; RE UFCW, LOCAL 333 (CANADIAN SECURITY UNION) AND INTERNATIONAL UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1956(Mar./Apr.) 192

Certification - Representation Vote - Trade Union - Trade Union Status - Employer asserting that employees affected by certification application already represented by employees' association, that employees' association a trade union within meaning of the Act, and that employer and employees' association parties to a collective agreement within meaning of the Act - Certification application timely even assuming that employer's assertions correct - Board directing representation vote in which employees asked to cast two ballots - First ballot to ask voters whether they wish to be represented by applicant union - Second ballot to ask voters whether they wish to be represented by applicant union or employees' association - Issue of status of employees' association to be determined at hearing following the vote	
CANARM LTD.; RE USWA; RE CANARM EMPLOYEES ASSOCIATION (Sept./Oct.)	747
Certification Where Act Contravened - Adjournment - Certification - Construction Industry - Discharge - Practice and Procedure - Remedies - Unfair Labour Practice - Board not satisfied that medical evidence justifying employer's inability to attend at Board hearing - Adjournment request denied - Board finding employer's threats to close business and subsequent layoff of employees in violation of the Act - Union certified under section 11(1) of the Act	
BALKAN GLASS & ALUMINUM INC.; RE PAT, LOCAL UNION 1819 (GLAZIERS) (Sept./Oct.)	717
Certification Where Act Contravened - Certification - Construction Industry - Discharge - Interference in Trade Unions - Intimidation and Coercion - Unfair Labour Practice - Certification application filed under old Labour Relations Act caught by transition provisions of Bill 7 and determined under new Labour Relations Act, 1995 - Board finding that employer violating the Act in discharging union supporter and in circulating questionnaire inquiring about employees' union membership - Board directing that discharged employee be compensated for lost earnings - Board also certifying union under section 11 of the Act	
CULLITON BROTHERS LIMITED; RE IBEW, LOCAL 804; RE GROUP OF EMPLOYEES (July/Aug.)	593
Certification Where Act Contravened - Certification - Discharge - Discharge for Union Activity - Interference in Trade Unions - Unfair Labour Practice - Board finding that employer violated the Act in promoting an employee association in the face of the union organizing campaign and in indefinitely suspending the lead inside union organizer - Board certifying union under section 11(1) of the Act	
BURLINGTON GOLF & COUNTRY CLUB LIMITED; RE CANADIAN UNION OF OPERATING ENGINEERS AND GENERAL WORKERS (July/Aug.)	505
Certification Where Act Contravened - Certification - Interference in Trade Unions - Intimidation and Coercion - Reconsideration - Unfair Labour Practice - Board finding that employer removal of key inside union organizer from workplace and subsequent reassignment tainted by anti-union animus - Board also finding that various steps to increase managerial presence in workplace during organizing campaign coloured by anti-union motivation - Board certifying union under section 9.2 of "old" Labour Relations Act - Employer seeking reconsideration of decision on grounds that "bottom line" decision (without reasons) issued on November 10, 1995 was not "final" decision for purposes of transitional provisions of Bill 7 - Employer submitting that Board ought to have decided case under section 11(1) of "new" Labour Relations Act - Board noting that absence of reasons not undermining dispositive effect of "bottom line" decision and that Bill 7 requiring that "new" Act apply retroactively only where no final decision having issued on November 10, 1995 - Reconsideration application dismissed	
SHOPPERS DRUG MART, ASM DISPENSARIES LIMITED C.O.B. AS; RE USWA; RE GROUP OF EMPLOYEES (Mar./Apr.)	303
Certification Where Act Contravened - Certification - Interference in Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice - After receiving copy of union's certification	

application, employer meeting with employees one-to-one and asking them to sign personalized declaration opposing trade union - Employer acting on legal advice and in belief that he was acting in compliance with Board's rules - Only one of five employees subsequently casting ballot in representation vote - Union losing vote - Board setting aside representation vote and directing new vote - Employer directed to cease and desist violating Act, to post decision and attached notice in workplace and to mail copy to each employee at home, and to provide union opportunity to address employees at meeting held during normal working hours - Union's application to be certified under section 11(1) of the Act dismissed

MAVERICK MECHANICAL CONTRACTORS LIMITED; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION.....(Mar./Apr.)

289

Change in Working Conditions Evidence - Certification - Construction Industry - Evidence - Intimidation and Coercion - Practice and Procedure - Representation Vote - Unfair Labour Practice - Witness - After conducting inquiry into witness's alleged prior inconsistent statement, Board declining to declare witness hostile or adverse - Board concluding that union used charges and threat of charges under its constitution to intimidate employees into supporting certification application - Certification application dismissed under section 11(2) of the Act - Board finding that employer violated statutory freeze when it changed wage rate it had agreed to pay to two employees - Compensation ordered

CENTRO MECHANICAL INC.; RE UA, AND ITS LOCAL 221(Sept./Oct.)

762

Charges - Construction Industry - Employee - Employer Initiation - Intimidation and Coercion - Termination - Board rejecting union's argument that newly enacted subsection 63(16) of the Act confirming Board's historical practice of requiring applicant in termination proceedings to establish voluntariness of petition - Board expressing view that hearing under subsection 63(16) should be convened only where allegations of misconduct have been pleaded in such a manner as to establish *prima facie* case of employer initiation or employer threats and coercion - Board considering relevance of rule in *April Waterproofing* case after Bill 7 and concluding that union may still allege in termination application that one or more employees on the application date had been hired contrary to the collective agreement and therefore unable to properly cast a ballot in a representation vote

ELIRPA CONSTRUCTION AND MATERIALS LIMITED; RE KEVIN SMITH AND CLIFFORD WILKINSON; RE IUOE, LOCAL 793.....(Jan.)

4

Charges - Employer Initiation - Intimidation and Coercion - Construction Industry - Representation Vote - Termination - In response to termination application, union seeking dismissal under subsection 63(16) of the Act and pleading material facts sufficient to establish *prima facie* case of employer initiation or employer threats and intimidation in connection with application - Board directing that representation vote be deferred until determination of allegations raised by union and listing matter for hearing

ONTARIO TRUSS AND WALL, 520601 ONTARIO LTD., O/A; RE IAN CROCKFORD ET AL; RE CJA AND ITS LOCAL 1030.....(Jan.)

24

Charter of Rights and Freedoms - Constitutional Law - Construction Industry - Judicial Review - Ontario Construction Secretariat bringing complaint against Labourers' union and Sheet Metal Workers' union for failure to remit payments to it contrary to section 155 of the Act - Responding unions asserting that section 155 of the Act and O.Reg. 187/93 unconstitutional and ought not to be enforced by the Board - Board finding amendment to *Labour Relations Act* and regulation made thereunder creating Ontario Construction Secretariat constitutionally within authority of province - Application for judicial review dismissed by Divisional Court

ONTARIO CONSTRUCTION SECRETARIAT AND ONTARIO LABOUR RELATIONS BOARD; RE LIUNA AND SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND ONTARIO SHEET METAL WORKERS' & ROOFERS CONFERENCE AND THE BUILT-UP ROOFERS', DAMP AND WATERPROOFERS' SECTION OF THE SHEET METAL WORKERS' CONFERENCE.....(Nov./Dec.)

1016

Charter of Rights and Freedoms - Constitutional Law - Remedies - Strike - General Motors alleging that work stoppage at its London plant in connection with day of protest constituting unlawful strike and seeking declaratory relief as well as cease and desist direction - Union asserting that work stoppage was form of political expression protected by Charter and not "unlawful strike" - Board agreeing that work stoppage was form of "expression" protected by section 2(b) of the Charter, but holding that Labour Relations Act's prohibition on strikes during currency of collective agreement part of balancing embodied in the Act that is within the realm of reasonableness that Courts have accorded to legislatures when addressing labour relations problems - Board finding impugned provisions of the Act not inconsistent with Charter - Board declaring work stoppage at London's GM plant to be unlawful but declining to issue cease and desist direction in respect of future protest strikes

GENERAL MOTORS OF CANADA LIMITED, ("GM" OR "THE COMPANY"); RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA), ET AL (LISTED ON "SCHEDULE A" TO THE APPLICATION)..... (May/June)

409

Charter of Rights and Freedoms - Constitutional Law - Strike - Picketing - Remedies - Toronto Transit Commission ("TTC") alleging that certain protest leaders and labour organizations violating section 83 of the Act by making certain statements and encouraging picketing at TTC sites in effort to ensure that TTC unable to operate during "Days of Protest" against Provincial Government - Respondents arguing that "talking" and "speaking", as opposed to "acts", not falling within ambit of section 83 - Respondents also arguing that section 83 should be read subject to respondents' Charter rights and that there was no causal connection established between protest leaders statements and unlawful strike that might result - Board dismissing application against labour organizations on grounds that only "persons" may breach section 83 of the Act - Board finding and declaring that two of three named individual respondents violated section 83 of the Act - Individual respondents directed to cease and desist from encouraging persons to picket TTC premises as restricted by the Board - Board prohibiting picketing in and around access points identified by TTC if it will interfere with employees' access to work - Picketing at subway stations also restricted during certain specified hours - Individual respondents directed to advise participants in "Days of Protest" of declarations and directions made by the Board

TORONTO TRANSIT COMMISSION; RE GORD WILSON, SID RYAN, LINDA TORNEY, OFL, CUPE, AND LABOUR COUNCIL OF METROPOLITAN TORONTO; RE MS. MEENU SIKAND-TAYLOR..... (Sept./Oct.)

889

Collective Agreement - Construction Industry - Judicial Review - Voluntary Recognition - Related Employer - Sale of a Business - Board finding that 1966 sale transaction between "old RYCO" and "new RYCO" not giving rise to "successor rights" obligations because 1957 Working Agreement entered into by "old RYCO" was "recognition agreement" and not "collective agreement" - Board declining to declare "old RYCO" and "new RYCO" related employers in circumstances where the companies ceased carrying on related or associated activities or businesses several years prior to enactment of subsection 1(4) of the Act - Sale of business and related employer applications dismissed - Unions' application for judicial review dismissed by Divisional Court

ROBERTSON-YATES CORPORATION LIMITED AND THE OLRB; RE IBEW, LOCAL 105, PAT, LOCALS 205 AND 1824, UA, LOCAL 67..... (Jan.)

55

Collective Agreement - Construction Industry - Ratification and Strike Vote - Memorandum of settlement between union and employer in construction industry made contingent on ratification - Union submitting agreement to union's accredited delegates and not to employees in the

bargaining unit - Board dismissing complaint alleging that provisions of section 79 of the Act requiring employee ratification in these circumstances

IBEW, KEN WOODS, ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL UNION 1788 BY ITS TRUSTEE, IBEW AND ONTARIO HYDRO AND EPSCA AND IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO; RE POWER WORKERS' UNION - CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF IBEW, LOCAL UNION 1788..... (Sept./Oct.)

821

Collective Agreement - Duty to Bargain in Good Faith - Remedies - Unfair Labour Practice - Union alleging violation of duty to bargain in good faith where employer deciding not to ratify what had been negotiated between its collective bargaining representatives and those of union - Board rejecting union's argument that collective agreement had, as matter of fact, been concluded between parties - Board, however, deciding that employer's failure to develop adequate bargaining mandate falling short of obligation to make every reasonable effort to conclude collective agreement - Employer directed to develop unconditional proposal for collective agreement and return to table and bargain with union in good faith

CORPORATION LE LYCÉE CLAUDEL; RE SYNDICAT CANADIEN DE LA FONCTION PUBLIQUE ET SA SECTION LOCALE 2519..... (May/June)

370

Colleges Collective Bargaining Act - Discharge - Duty of Fair Representation - Health and Safety - Practice and Procedure - Unfair Labour Practice - Applicant complaining about union's handling of various grievances and about conduct of College alleged to have caused stress and to constitute workplace hazard- Board exercising its discretion not to inquire into complaint under Colleges Collective Bargaining Act because of delay and because no labour relations purpose would be served by the inquiry - Application under Occupational Health and Safety Act (OHSA), except for issue of separation from employment, dismissed for delay - Application under OHSA dealing with termination stayed by Board pending outcome of complaints filed by applicant with Human Rights Commission

GAZIT, DAVID; RE OPSEU; RE GEORGE BROWN COLLEGE (July/Aug.)

635

Combination of Bargaining Units - Bargaining Unit - Nursing home employer applying under Bill 7 transition provisions to "de-combine" bargaining units including full-time and part-time workers - Board reviewing its pre-Bill 40 policy in respect of part-time employees in wake of test in *Hospital for Sick Children* case and subsequent jurisprudential developments - Board not satisfied that assertions about lack of community of interest between full and part-time employees ought to continue to be elevated to level of labour relations axiom - Board rejecting argument that it ought to return to practice whereby part-time employees automatically excluded from full-time bargaining units on the request of a party - In case before it, Board satisfied that existing units appropriate because community of interest existing between full-time and part-time employees - Application dismissed

CARESSANT CARE NURSING HOME OF CANADA LIMITED; RE CUPE, LOCAL 2225.09 (Sept./Oct.)

748

Conciliation - Abandonment - Bargaining Rights - Construction Industry - Reference - Union certified in 1984 to represent construction labourers in ICI sector and all other sectors - Union subsequently entering into collective agreements covering labourers engaged in road and bridge building construction projects - Union in 1996 seeking to negotiate collective agreement covering labourers in other sectors - Employer asserting that it has not been active outside road and bridges construction and ICI sector - Employer objecting to appointment of conciliation officer in relation to bargaining for bargaining unit covering labourers in other sectors - Board

finding no abandonment of bargaining rights and advising Minister of Labour that she has authority to make requested appointment of conciliation officer

JOHN HAYMAN & SONS COMPANY LIMITED, THE; RE LIUNA, LOCAL 1059(Nov./Dec.) 945

Constitutional Law - Abandonment - Bargaining Rights - Construction Industry - Construction Industry Grievance - Judicial Review - Board finding constitutional issue raised by employer to be *res judicata* - Fact that there was little contact between union and employer or its employees, or fact that grievances were not filed in all instances of violation of collective agreement (in absence of unambiguous evidence that union knew or reasonably ought to have known of those violations and did nothing) insufficient to warrant finding that union abandoned bargaining rights - Board finding that essential elements of estoppel established in relation to both conduct of local union filing grievance and the employee bargaining agency and other ABAs holding bargaining rights for employer's employees - Board deciding that notice bringing estoppel to an end coming with Board's decision - Board dismissing grievance but declaring that employer bound to recognize union's bargaining rights and bound to existing provincial agreement - Employer's application for judicial review dismissed by Divisional Court

TORONTO-DOMINION BANK, THE; RE CJA, LOCAL 785 AND THE OLRB..(Sept./Oct.) 903

Constitutional Law - Charter of Rights and Freedoms - Construction Industry - Judicial Review - Ontario Construction Secretariat bringing complaint against Labourers' union and Sheet Metal Workers' union for failure to remit payments to it contrary to section 155 of the Act - Responding unions asserting that section 155 of the Act and O.Reg. 187/93 unconstitutional and ought not to be enforced by the Board - Board finding amendment to *Labour Relations Act* and regulation made thereunder creating Ontario Construction Secretariat constitutionally within authority of province - Application for judicial review dismissed by Divisional Court

ONTARIO CONSTRUCTION SECRETARIAT AND ONTARIO LABOUR RELATIONS BOARD; RE LIUNA AND SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND ONTARIO SHEET METAL WORKERS' & ROOFERS CONFERENCE AND THE BUILT-UP ROOFERS', DAMP AND WATERPROOFERS' SECTION OF THE SHEET METAL WORKERS' CONFERENCE.....(Nov./Dec.) 1016

Constitutional Law - Charter of Rights and Freedoms - Remedies - Strike - General Motors alleging that work stoppage at its London plant in connection with day of protest constituting unlawful strike and seeking declaratory relief as well as cease and desist direction - Union asserting that work stoppage was form of political expression protected by Charter and not "unlawful strike" - Board agreeing that work stoppage was form of "expression" protected by section 2(b) of the Charter, but holding that Labour Relations Act's prohibition on strikes during currency of collective agreement part of balancing embodied in the Act that is within the realm of reasonableness that Courts have accorded to legislatures when addressing labour relations problems - Board finding impugned provisions of the Act not inconsistent with Charter - Board declaring work stoppage at London's GM plant to be unlawful but declining to issue cease and desist direction in respect of future protest strikes

GENERAL MOTORS OF CANADA LIMITED, ("GM" OR "THE COMPANY"); RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA), ET AL (LISTED ON "SCHEDULE A" TO THE APPLICATION).....(May/June) 409

Constitutional Law - Charter of Rights and Freedoms - Strike - Picketing - Remedies - Toronto Transit Commission ("TTC") alleging that certain protest leaders and labour organizations violating section 83 of the Act by making certain statements and encouraging picketing at TTC sites in effort to ensure that TTC unable to operate during "Days of Protest" against Provincial Government - Respondents arguing that "talking" and "speaking", as opposed to "acts", not falling within ambit of section 83 - Respondents also arguing that section 83 should be read

subject to respondents' Charter rights and that there was no causal connection established between protest leaders statements and unlawful strike that might result - Board dismissing application against labour organizations on grounds that only "persons" may breach section 83 of the Act - Board finding and declaring that two of three named individual respondents violated section 83 of the Act - Individual respondents directed to cease and desist from encouraging persons to picket TTC premises as restricted by the Board - Board prohibiting picketing in and around access points identified by TTC if it will interfere with employees' access to work - Picketing at subway stations also restricted during certain specified hours - Individual respondents directed to advise participants in "Days of Protest" of declarations and directions made by the Board

TORONTO TRANSIT COMMISSION; RE GORD WILSON, SID RYAN, LINDA TORNEY, OFL, CUPE, AND LABOUR COUNCIL OF METROPOLITAN TORONTO; RE MS. MEENU SIKAND-TAYLOR(Sept./Oct.)

903

Construction Industry - Abandonment - Bargaining Rights - Conciliation - Reference - Union certified in 1984 to represent construction labourers in ICI sector and all other sectors - Union subsequently entering into collective agreements covering labourers engaged in road and bridge building construction projects - Union in 1996 seeking to negotiate collective agreement covering labourers in other sectors - Employer asserting that it has not been active outside road and bridges construction and ICI sector - Employer objecting to appointment of conciliation officer in relation to bargaining for bargaining unit covering labourers in other sectors - Board finding no abandonment of bargaining rights and advising Minister of Labour that she has authority to make requested appointment of conciliation officer

JOHN HAYMAN & SONS COMPANY LIMITED, THE; RE LIUNA, LOCAL 1059(Nov./Dec.)

945

Construction Industry - Abandonment - Bargaining Rights - Constitutional Law - Construction Industry Grievance - Judicial Review - Board finding constitutional issue raised by employer to be *res judicata* - Fact that there was little contact between union and employer or its employees, or fact that grievances were not filed in all instances of violation of collective agreement (in absence of unambiguous evidence that union knew or reasonably ought to have known of those violations and did nothing) insufficient to warrant finding that union abandoned bargaining rights - Board finding that essential elements of estoppel established in relation to both conduct of local union filing grievance and the employee bargaining agency and other ABAs holding bargaining rights for employer's employees - Board deciding that notice bringing estoppel to an end coming with Board's decision - Board dismissing grievance but declaring that employer bound to recognize union's bargaining rights and bound to existing provincial agreement - Employer's application for judicial review dismissed by Divisional Court

TORONTO-DOMINION BANK, THE; RE CJA, LOCAL 785 AND THE OLRB..(Sept./Oct.)

903

Construction Industry - Adjournment - Certification - Certification Where Act Contravened - Discharge - Practice and Procedure - Remedies - Unfair Labour Practice - Board not satisfied that medical evidence justifying employer's inability to attend at Board hearing - Adjournment request denied - Board finding employer's threats to close business and subsequent layoff of employees in violation of the Act - Union certified under section 11(1) of the Act

BALKAN GLASS & ALUMINUM INC.; RE PAT, LOCAL UNION 1819 (GLAZIERS)(Sept./Oct.)

717

Construction Industry - Alteration of Jurisdiction - Parties - Practice and Procedure - Unfair Labour Practice - IBEW Local ("Local 1788") alleging that IBEW (the "International") altering its jurisdiction without just cause contrary to Bill 80 amendments to the Act - Board granting standing to IBEW Electrical Power Systems Construction Council of Ontario, various locals of IBEW, EPSCA, and Ontario Hydro and denying standing to IBEW Construction Council of Ontario and to Electrical Contractors Association of Ontario - Board directing applicant Local

1788 to call its evidence first - On the merits, Board determining that International had altered Local 1788's jurisdiction as alleged, but that it had just cause to do so - Board satisfied that alteration of jurisdiction likely to facilitate viable and stable collective bargaining without causing serious labour relations problems - Application dismissed

IBEW; RE IBEW LOCAL 1788; RE THE IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO AND IBEW, LOCAL UNIONS 105, 115, 120, 303, 402, 530, 586, 773, 804, 894, 1687 AND 1739; EPSCA AND ONTARIO HYDRO; IBEW, LOCAL 353 (Feb.)

70

Construction Industry - Arbitration - Construction Industry Grievance - Grievance delivered to employer and referred to arbitration well beyond time limits contained in collective agreement - While union offering explanation for delay in filing grievance, no explanation given for 8 1/2 month delay in referring grievance to arbitration - Board not satisfied that reasonable grounds existing to extend time limits in collective agreement - Grievance dismissed

ZENTIL PLUMBING & HEATING CONTRACTING LTD.; UA, LOCAL UNION 46.. (Feb.)

178

Construction Industry - Bargaining Rights - Certification - Practice and Procedure - Sale of a Business - Related Employer - Responding employer asking Board to bar union's sale of a business and related employer applications filed while certification application pending in connection with same employer - Employer's request dismissed

MAGNUM GLASS INC., MAGNUM ASSOCIATES LTD., MAGNUM GLASS INSTALLATIONS LTD., HARDIE GLASS & ALUMINUM INC.; RE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES AND THE ONTARIO COUNCIL OF INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES (Feb.)

95

Construction Industry - Bargaining Rights - Construction Industry Grievance - Related Employer - Sale of a Business - Board holding that Ontario Provincial Conference (OPC) designation for tile and terrazzo workers limits OPC's representation rights to journeymen and apprentice marble, tile, terrazzo, cement masons, resilient floor layers and their helpers for whom OPC, one of the specified locals, or a subsequently chartered local has bargaining rights - Board not accepting that sub-contracting clause in provincial bricklayers' agreement requiring contractors bound to the agreement to sub-contract work covered by provincial marble, tile and terrazzo agreement to contractor bound by such agreement - Board accordingly determining that responding parties not bound to provincial marble, tile and terrazzo agreement, nor are they required by provincial bricklayers' agreement to subcontract tile and terrazzo work to contractor bound by provincial bricklayers' agreement or provincial, marble tile and terrazzo agreement

DINEEN CONSTRUCTION CONSTRUCTION LIMITED, MITCHELL CONSTRUCTION LIMITED, BUTTCON LIMITED, M.A. BUTT CONSTRUCTION LIMITED, M.A. BUTT CONSTRUCTION (1983) LIMITED; RE ONTARIO PROVINCIAL CONFERENCE OF BRICKLAYERS AND ALLIED CRAFTSMEN AND BAC, LOCAL 2, ONTARIO AND MARBLE TILE & TERRAZZO UNION, LOCAL 31; RE TERRAZZO, TILE & MARBLE GUILD OF ONTARIO, INC. (July/Aug.)

610

Construction Industry - Bargaining Unit - Employee - Grievance - Termination - Board ruling that non-ICI collective agreement between employer and Labourers' union not covering work performed in the "yard" on the termination application date - Accordingly, Board determining that no one working in bargaining unit on application date - Termination application dismissed

GAVIGAN CONTRACTING LTD.; RE LIUNA, LOCAL 1059 (May/June)

405

Construction Industry - Certification - Board in earlier decision directing second representation vote after declining to count single segregated ballot cast by voter ruled eligible to vote - Union seeking leave to withdraw certification application on day prior to scheduled date of second vote - Board imposing 12 month bar on new certification application by union under section

7(9) of the Act on ground that employees' wishes had been effectively tested and that there ought to be a period of repose

METRIÇ CONTRACTING SERVICE CORPORATION; RE LIUNA, LOCAL 837(Nov./Dec.) 996

Construction Industry - Certification - Certification Where Act Contravened - Discharge - Interference in Trade Unions - Intimidation and Coercion - Unfair Labour Practice - Certification application filed under old Labour Relations Act caught by transition provisions of Bill 7 and determined under new Labour Relations Act, 1995 - Board finding that employer violating the Act in discharging union supporter and in circulating questionnaire inquiring about employees' union membership - Board directing that discharged employee be compensated for lost earnings - Board also certifying union under section 11 of the Act

CULLITON BROTHERS LIMITED; RE IBEW, LOCAL 804; RE GROUP OF EMPLOYEES.....(July/Aug.) 593

Construction Industry - Certification - Change in Working Conditions Evidence - Evidence - Intimidation and Coercion - Practice and Procedure - Representation Vote - Unfair Labour Practice - Witness - After conducting inquiry into witness's alleged prior inconsistent statement, Board declining to declare witness hostile or adverse - Board concluding that union used charges and threat of charges under its constitution to intimidate employees into supporting certification application - Certification application dismissed under section 11(2) of the Act - Board finding that employer violated statutory freeze when it changed wage rate it had agreed to pay to two employees - Compensation ordered

CENTRO MECHANICAL INC.; RE UA, AND ITS LOCAL 221(Sept./Oct.) 762

Construction Industry - Certification - Employee - Natural Justice - Reconsideration - Representation Vote - Settlement - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing

B & B ELECTRIC CO. DIVISION OF ELECTROBAUER SYSTEMS LIMITED AND/OR ELECTROBAUER LIMITED; RE IBEW, LOCAL 353.....(Nov./Dec.) 907

Construction Industry - Certification - Employee - Representation Vote - Board not accepting employer's submission that employees not employed on the certification application filing date should be entitled to cast ballots in representation vote - Board finding contested employee to be employed in bargaining unit on application date - Board directing Registrar to have ballots counted in accordance with its decision

KEN ANDERSON ELECTRIC INC.; RE IBEW, LOCAL 402.....(Sept./Oct.) 846

Construction Industry - Certification - Employer - Judicial Review - Board finding that personnel agencies not the employers of electricians for whom union seeking bargaining rights - Certification applications dismissed - Union's application for judicial review dismissed by Divisional Court

DARE PERSONNEL INC. AND 1092009 ONTARIO INC. C.O.B. PERSONNEL FORCE AND ONTARIO LABOUR RELATIONS BOARD; RE IBEW, LOCAL 586(Nov./Dec.) 1014

- Construction Industry - Certification - Employer Support - Unfair Labour Practice - CLAC seeking to displace Sheet Metal Workers' union as employees' bargaining agent - Board concluding that employer's support of CLAC clear and significant and qualifying as "other support" within meaning of section 15 of the Act - CLAC's application for certification dismissed
- COVERTITE EASTERN LIMITED; RE CLAC, LOCAL 52; RE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 47 (May/June) 386
- Construction Industry - Certification - Evidence - Termination - Trade Union - Trade Union Status - Unfair Labour Practice - Board dismissing submission that decision in *Canadian Union of Shinglers & Allied Workers* case determinative of issue of employee status of crew leaders in residential roofing industry - *Res judicata* not applying to Board's finding regarding crew leaders in earlier case
- DOMINION SHEET METAL & ROOFING WORKS; RE LIUNA, LOCAL 183; RE CANADIAN UNION OF SHINGLERS & ALLIED WORKERS, CJA, LOCAL 27 (Sept./Oct.) 795
- Construction Industry - Certification - Reconsideration - Representation Vote - Board rejecting union's request to schedule second representation vote where vote was held five days after filing of application, but on day that employees not scheduled to work and in circumstances where only one of five eligible voters cast ballot - Board not prepared to draw inference that vote not a true reflection of desires of the employees - Reconsideration application dismissed
- MAVERICK MECHANICAL CONTRACTORS LIMITED; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION.....(Jan.) 17
- Construction Industry - Charges - Employee - Employer Initiation - Intimidation and Coercion - Termination - Board rejecting union's argument that newly enacted subsection 63(16) of the Act confirming Board's historical practice of requiring applicant in termination proceedings to establish voluntariness of petition - Board expressing view that hearing under subsection 63(16) should be convened only where allegations of misconduct have been pleaded in such a manner as to establish *prima facie* case of employer initiation or employer threats and coercion - Board considering relevance of rule in *April Waterproofing* case after Bill 7 and concluding that union may still allege in termination application that one or more employees on the application date had been hired contrary to the collective agreement and therefore unable to properly cast a ballot in a representation vote
- ELIRPA CONSTRUCTION AND MATERIALS LIMITED; RE KEVIN SMITH AND CLIFFORD WILKINSON; RE IUOE, LOCAL 793.....(Jan.) 4
- Construction Industry - Charges - Employer Initiation - Intimidation and Coercion - Representation Vote - Termination - In response to termination application, union seeking dismissal under subsection 63(16) of the Act and pleading material facts sufficient to establish *prima facie* case of employer initiation or employer threats and intimidation in connection with application - Board directing that representation vote be deferred until determination of allegations raised by union and listing matter for hearing
- ONTARIO TRUSS AND WALL, 520601 ONTARIO LTD., O/A; RE IAN CROCKFORD ET AL; RE CJA AND ITS LOCAL 1030.....(Jan.) 24
- Construction Industry - Charter of Rights and Freedoms - Constitutional Law - Judicial Review - Ontario Construction Secretariat bringing complaint against Labourers' union and Sheet Metal Workers' union for failure to remit payments to it contrary to section 155 of the Act - Responding unions asserting that section 155 of the Act and O.Reg. 187/93 unconstitutional and ought not to be enforced by the Board - Board finding amendment to *Labour Relations Act*

and regulation made thereunder creating Ontario Construction Secretariat constitutionally within authority of province - Application for judicial review dismissed by Divisional Court

ONTARIO CONSTRUCTION SECRETARIAT AND ONTARIO LABOUR RELATIONS BOARD; RE LIUNA AND SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND ONTARIO SHEET METAL WORKERS' & ROOFERS CONFERENCE AND THE BUILT-UP ROOFERS', DAMP AND WATERPROOFERS' SECTION OF THE SHEET METAL WORKERS' CONFERENCE.....(Nov./Dec.)

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Construction Industry - Collective Agreement - Judicial Review - Voluntary Recognition - Related Employer - Sale of a Business - Board finding that 1966 sale transaction between "old RYCO" and "new RYCO" not giving rise to "successor rights" obligations because 1957 Working Agreement entered into by "old RYCO" was "recognition agreement" and not "collective agreement" - Board declining to declare "old RYCO" and "new RYCO" related employers in circumstances where the companies ceased carrying on related or associated activities or businesses several years prior to enactment of subsection 1(4) of the Act - Sale of business and related employer applications dismissed - Unions' application for judicial review dismissed by Divisional Court

ROBERTSON-YATES CORPORATION LIMITED AND THE OLRB; RE IBEW, LOCAL 105, PAT, LOCALS 205 AND 1824, UA, LOCAL 67.....(Jan.)

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Construction Industry - Collective Agreement - Ratification and Strike Vote - Memorandum of settlement between union and employer in construction industry made contingent on ratification - Union submitting agreement to union's accredited delegates and not to employees in the bargaining unit - Board dismissing complaint alleging that provisions of section 79 of the Act requiring employee ratification in these circumstances

IBEW, KEN WOODS, ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL UNION 1788 BY ITS TRUSTEE. IBEW AND ONTARIO HYDRO AND EPSCA AND IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO; RE POWER WORKERS' UNION - CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF IBEW, LOCAL UNION 1788.....(Sept./Oct.)

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Construction Industry - Construction Industry Grievance - Employee - Judicial Review - Board finding off-site fabrication shop employees to be employees in the construction industry and holding that, when engaged in fabrication of ductwork destined for ICI job site, their work is covered by ICI agreement - Application for judicial review dismissed by Divisional Court

DURASYSTEMS BARRIERS INC., DUFFY MECHANICAL CONTRACTORS LIMITED AND; RE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 30 AND ONTARIO LABOUR RELATIONS BOARD.....(Sept./Oct.)

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Construction Industry - Construction Industry Grievance - Parties - Practice and Procedure - Union's grievance raising issue of whether work involved construction work or maintenance work - Union alleging that work covered by ICI agreement and employer asserting that work properly dealt with under terms of General Presidents' Maintenance Committee for Canada Project Agreement - General Presidents' Maintenance Committee for Canada ("GPC") and project owner each seeking to intervene in proceeding - Board concluding that neither project owner nor GPC entitled to standing as of right, but granting standing to GPC as matter of discretion - Project owner denied standing

JADDCO ANDERSON LIMITED; RE IBEW, LOCAL 105(Mar./Apr.)

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Construction Industry - Construction Industry Grievance - Practice and Procedure - Employer objecting to Board's consideration of grievance under ICI provincial agreement because subject matter had earlier been referred to and decided by panel of General Presidents' Maintenance

Committee under terms of General Presidents' Maintenance Committee Project Agreements - Employer's objection upheld - Board terminating proceeding before it

DELTA CATALYTIC INDUSTRIAL SERVICES LIMITED; IBEW, LOCAL 353;
RE GENERAL PRESIDENT'S MAINTENANCE COMMITTEE FOR CANADA,
PETRO-CANADA (Mar./Apr.) 233

Construction Industry - Construction Industry Grievance - Sector Determination - Employer disputing jurisdiction of Board to determine union's grievance on basis that work in question falling within sewer and watermain sector and road sector, and not I.C.I. sector of construction industry - Employer asking Board to make sector determination under section 166 of the Act - Board applying *London Sandblasting* case and ruling that employer bargaining agency having authority to negotiate clause in Provincial Agreement providing that that agreement applying in all other sectors where certain conditions met - Board concluding that it has jurisdiction to arbitrate issues raised by grievance - Board also concluding that terms of Provincial Agreement precluding need for sector determination

TRAUGOTT CONSTRUCTION (KITCHENER) LIMITED; LIUNA, LOCAL 1081 (Jan.) 45

Construction Industry - Discharge - Interference with Local Trade Unions - Applicant alleging that he was removed from office of Business Representative of Carpenters' union Local 27 by decision of International union taken without just cause contrary to Bill 80 amendments to the Act - Board finding that section 149(2) of the Act does not create rights to protect an individual except as necessary to protect the local union's autonomy - Board dismissing application as no issue of local autonomy advanced before it

DORINGTON SMITH; RE CJA; RE CJA, LOCAL 27 (July/Aug.) 621

Construction Industry - Duty to Bargain in Good Faith - Unfair Labour Practice - Board deciding that unions breaching duty to bargain in good faith by pressing to impasse demand that employers represented by the Masonry Contractors Ontario, Greater Toronto Area ("MCO") include provision in collective agreements requiring them to make industry fund payments to rival Masonry Contractors Association of Toronto ("MCAT")

MASONRY CONTRACTORS ONTARIO, GREATER TORONTO AREA ON ITS OWN BEHALF AND ON BEHALF OF ITS MEMBERS (MCO) AND THE INDIVIDUAL EMPLOYERS WHOSE NAMES ARE SET OUT ON SCHEDULE B ATTACHED HERETO, THE; RE LIUNA, LOCAL 183 AND BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA, LOCAL 1 AND THE MASONRY COUNCIL OF UNIONS TORONTO & VICINITY; RE MASONRY CONTRACTORS ASSOCIATION OF TORONTO ("MCAT") (Nov./Dec.) 951

Construction Industry - Evidence - Jurisdictional Dispute - Practice and Procedure - Carpenters' union and Labourers' union disputing assignment of certain work in connection with placement and rough assembly of column forms on parking garage construction project - Board declining to hear oral evidence on issue of employer practice desired to be called by Carpenters' union - Board confirming employer's composite crew assignment

RAPID FORMING INC., CARPENTERS AND ALLIED WORKERS LOCAL 27, CJA AND;
RE LIUNA, LOCAL 506 (Jan.) 26

Construction Industry - Evidence - Jurisdictional Dispute - Practice and Procedure - Labourers' union and Carpenters' union disputing assignment of work in connection with stripping of formwork where forms are to be re-used - Board expressing view that assignment should have been made to composite crew and seeking further submissions from the parties regarding the appropriate composition of the crew - Board also taking opportunity to comment on materials filed and noting that correspondence from employers respecting their practice should, to the greatest extent possible, be the work product of the employer and not the party submitting the material to the Board - Board finding "standard form, fill-in-the-blank" letters to be of little utility -

Board also declining to place any weight on “general” declarations prepared by members and filed by union where accuracy of declarations difficult to judge

T.A. ANDRE & SONS (ONTARIO LTD., CJA, LOCAL 249 AND; RE LIUNA, LOCAL 247 (July/Aug.) 690

Construction Industry - Evidence - Practice and Procedure - Termination - Trade Union - Trade Union Status - Applicants seeking to terminate CUSAW’s bargaining rights in connection with several roofing contractors working in residential sector of construction industry - After close of CUSAW’s case, applicant moving to “nonsuit” CUSAW on ground that its own evidence failed to establish that it was a trade union within the meaning of the Act - Board explaining use of nonsuit motions and those akin to nonsuit motions in proceedings before it, and why Board considered applicant’s motion without putting it to its election - Board concluding that CUSAW not an organization of employees, but rather an organization formed by, and operated for the benefit of, employers (that is, crew leaders) - Application to terminate bargaining rights allowed CANADIAN UNION OF SHINGLERS & ALLIED WORKERS; RE JOE WHITE, HANK BROUWERS, PAUL CYR; RE RESIDENTIAL ROOFING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO ET AL.....(Mar./Apr.) 215

Construction Industry - Fraud - Termination - Union certified following failure of employer to respond to application - Employer subsequently seeking to terminate bargaining rights for alleged fraud - Employer alleging that union filed membership evidence on behalf of employees who were not its employees - Employer’s application dismissed for failure to make out *prima facie* case

LAW DEVELOPMENT GROUP; CARPENTERS AND ALLIED WORKERS LOCAL 27, CJA.....(Jan.) 13

Construction Industry - Interference in Trade Unions - Remedies - Termination - Unfair Labour Practice - Prior to directing representation vote, Board inquiring into union’s allegation that employer initiated termination application within meaning of section 63(16) of the Act - Board finding involvement of employer in early stage of process leading to termination application - Board holding that termination application founded in employer’s initiation should result in its dismissal absent compelling labour relations reasons why vote should still be held - Termination application dismissed under section 63(16) of the Act - Union’s unfair labour practice application alleging interference with union’s representation of employees allowed - Cease and desist order issuing

BYTOWN ELECTRICAL SERVICES LTD.; RE SHAWN JOSEPH ARSENAULT; RE IBEW AND THE IBEW CONSTRUCTION COUNCIL OF ONTARIO, LOCALS 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, 894, 1687 AND 1739.....(Sept./Oct.) 721

Construction Industry - Interim Relief - Remedies - Unfair Labour Practice - Applicants alleging that International union, through trusteeship has made unlawful use of local union’s assets, has improperly imposed dues increase on members and has conducted itself improperly in negotiating new collective agreements to detriment of members of local union - Applicants seeking interim order staying implementation of new collective agreements - Board concluding that it is without jurisdiction under section 98 of the Act to grant the interim order sought, but that Statutory Powers Procedure Act confers jurisdiction on Board to provide substantive interim relief, including the order sought - Board dismissing application for interim relief because of applicants’ undue delay

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, KEN WOODS, ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL UNION 1788 BY ITS TRUSTEE, IBEW AND ONTARIO HYDRO AND EPSCA; RE POWER WORKERS’ UNION - CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O’DONNELL, J. STARK, R. THOMS, H. TOMSETT, AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF IBEW, LOCAL UNION 1788(Sept./Oct.) 826

Construction Industry - Jurisdictional Dispute - Practice and Procedure - Ironworkers' union and Boilermakers' union disputing assignment of certain work - Boilermakers asking Board to refuse to entertain Ironworkers' application on basis that matter had already been decided under Plan for Settlement of Jurisdictional Disputes - Board considering effect of Bill 7 amendments to jurisdictional dispute provisions of the Act - Board exercising its discretion against inquiring further and dismissing Ironworkers' application	
ASEA BROWN BOVERI INC., BBF, LOCALS 128 AND 555; RE: BSOIW, LOCAL 759	(Mar./Apr.) 185
Construction Industry - Picketing - Strike - Threat to picket employer's worksite constituting threat to call or authorize unlawful strike for purposes of the Act - Ally doctrine not applying to facts before the Board - Declaration and cease and desist order issuing	
BLYTHYONGE DEVELOPMENTS INC.; RE LIUNA, LOCAL 183.....	(May/June) 336
Construction Industry - Related Employer - Board Companies A and B conceding that pre-conditions to granting section 1(4) relief present, but submitting that Board ought to exercise discretion against making single employer declaration - Board finding it inappropriate to grant section 1(4) relief for various reasons, including fact that Company A was incorporated before Company B, each entity performed its own type of work, there was no common pool or interchange of employees, the companies had been used in a way that had not compromised the union's bargaining rights and the union had represented at the time collective agreement was entered into that it would have no impact on Company A - Application dismissed	
FERRETTI FORMING INC., FER-PAL CONSTRUCTION LTD.; RE IUOE, LOCAL 793; RE LIUNA, LOCAL 183	(Feb.) 66
Construction Industry - Sector Determination - Board determining that construction of raw sewage pumping station falling within sewer and watermain sector and not ICI sector of construction industry	
DUNTRI CONSTRUCTION LTD.; RE CARPENTERS AND ALLIED WORKERS LOCAL 27, CJA; RE LIUNA, THE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION	(May/June) 399
Construction Industry - Strike - Local union's business manager writing to certain employers advising them that transfers of employees to job sites after the "shut-down start-time" are prohibited and that employees accepting such transfers will face charges by the union - Board declaring that local union and business manager threatening unlawful strike and issuing cease and desist orders	
SARNIA CONSTRUCTION ASSOCIATION AND MECHANICAL CONTRACTORS ASSOCIATION OF SARNIA; RE UA, LOCAL UNION 663 AND ROBERT J. HUMPHREYS	(May/June) 488
Construction Industry Grievance - Abandonment - Bargaining Rights - Board reviewing its approach where abandonment of bargaining rights alleged, including onus of proof and circumstances requiring that onus shift, standard of proof necessary to establish abandonment, and significance of union's "intent" - Parties agreeing that union never intended to abandon ICI bargaining rights - In this case, Board not satisfied that Bricklayers' union abandoned its bargaining rights with respondent general contractor	
G.S. WARK LIMITED; RE BRICKLAYERS' & MASONS' UNION NO. 1, ONTARIO OF THE INTERNATIONAL UNION OF BRICKLAYERS & ALLIED CRAFTSMEN; RE CONSTRUCTION WORKERS LOCAL 6, AFFILIATED WITH THE CLAC.....	(Sept./Oct.) 811
Construction Industry Grievance - Abandonment - Bargaining Rights - Constitutional Law - Construction Industry - Judicial Review - Board finding constitutional issue raised by employer to be <i>res judicata</i> - Fact that there was little contact between union and employer or its employees,	

or fact that grievances were not filed in all instances of violation of collective agreement (in absence of unambiguous evidence that union knew or reasonably ought to have known of those violations and did nothing) insufficient to warrant finding that union abandoned bargaining rights - Board finding that essential elements of estoppel established in relation to both conduct of local union filing grievance and the employee bargaining agency and other ABAs holding bargaining rights for employer's employees - Board deciding that notice bringing estoppel to an end coming with Board's decision - Board dismissing grievance but declaring that employer bound to recognize union's bargaining rights and bound to existing provincial agreement - Employer's application for judicial review dismissed by Divisional Court

TORONTO-DOMINION BANK, THE; RE CJA, LOCAL 785 AND THE OLRB..(Sept./Oct.) 903

Construction Industry Grievance - Arbitration - Construction Industry - Grievance delivered to employer and referred to arbitration well beyond time limits contained in collective agreement - While union offering explanation for delay in filing grievance, no explanation given for 8 1/2 month delay in referring grievance to arbitration - Board not satisfied that reasonable grounds existing to extend time limits in collective agreement - Grievance dismissed

ZENTIL PLUMBING & HEATING CONTRACTING LTD.; UA, LOCAL UNION 46..(Feb.) 178

Construction Industry Grievance - Bargaining Rights - Construction Industry - Related Employer - Sale of a Business - Board holding that Ontario Provincial Conference (OPC) designation for tile and terrazzo workers limits OPC's representation rights to journeymen and apprentice marble, tile, terrazzo, cement masons, resilient floor layers and their helpers for whom OPC, one of the specified locals, or a subsequently chartered local has bargaining rights - Board not accepting that sub-contracting clause in provincial bricklayers' agreement requiring contractors bound to the agreement to sub-contract work covered by provincial marble, tile and terrazzo agreement to contractor bound by such agreement - Board accordingly determining that responding parties not bound to provincial marble, tile and terrazzo agreement, nor are they required by provincial bricklayers' agreement to subcontract tile and terrazzo work to contractor bound by provincial bricklayers' agreement or provincial, marble tile and terrazzo agreement

DINEEN CONSTRUCTION CONSTRUCTION LIMITED, MITCHELL CONSTRUCTION LIMITED, BUTTCON LIMITED, M.A. BUTT CONSTRUCTION LIMITED, M.A. BUTT CONSTRUCTION (1983) LIMITED; RE ONTARIO PROVINCIAL CONFERENCE OF BRICKLAYERS AND ALLIED CRAFTSMEN AND BAC, LOCAL 2, ONTARIO AND MARBLE TILE & TERRAZZO UNION, LOCAL 31; RE TERRAZZO, TILE & MARBLE GUILD OF ONTARIO, INC. (July/Aug.) 610

Construction Industry Grievance - Construction Industry - Employee - Judicial Review - Board finding off-site fabrication shop employees to be employees in the construction industry and holding that, when engaged in fabrication of ductwork destined for ICI job site, their work is covered by ICI agreement - Application for judicial review dismissed by Divisional Court

DURASYSTEMS BARRIERS INC., DUFFY MECHANICAL CONTRACTORS LIMITED AND; RE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 30 AND ONTARIO LABOUR RELATIONS BOARD.....(Sept./Oct.) 901

Construction Industry Grievance - Construction Industry - Parties - Practice and Procedure - Union's grievance raising issue of whether work involved construction work or maintenance work - Union alleging that work covered by ICI agreement and employer asserting that work properly dealt with under terms of General Presidents' Maintenance Committee for Canada Project Agreement - General Presidents' Maintenance Committee for Canada ("GPC") and project owner each seeking to intervene in proceeding - Board concluding that neither project owner nor GPC entitled to standing as of right, but granting standing to GPC as matter of discretion - Project owner denied standing

JADDCO ANDERSON LIMITED; RE IBEW, LOCAL 105(Mar./Apr.) 249

- Construction Industry Grievance - Construction Industry - Practice and Procedure - Employer objecting to Board's consideration of grievance under ICI provincial agreement because subject matter had earlier been referred to and decided by panel of General Presidents' Maintenance Committee under terms of General Presidents' Maintenance Committee Project Agreements - Employer's objection upheld - Board terminating proceeding before it
- DELTA CATALYTIC INDUSTRIAL SERVICES LIMITED; IBEW, LOCAL 353;
RE GENERAL PRESIDENT'S MAINTENANCE COMMITTEE FOR CANADA,
PETRO-CANADA(Mar./Apr.) 233
- Construction Industry Grievance - Construction Industry - Sector Determination - Employer disputing jurisdiction of Board to determine union's grievance on basis that work in question falling within sewer and watermain sector and road sector, and not I.C.I. sector of construction industry - Employer asking Board to make sector determination under section 166 of the Act - Board applying *London Sandblasting* case and ruling that employer bargaining agency having authority to negotiate clause in Provincial Agreement providing that that agreement applying in all other sectors where certain conditions met - Board concluding that it has jurisdiction to arbitrate issues raised by grievance - Board also concluding that terms of Provincial Agreement precluding need for sector determination
- TRAUGOTT CONSTRUCTION (KITCHENER) LIMITED; LIUNA, LOCAL 1081(Jan.) 45
- Contempt - Certification - Employer Support - Evidence - Membership Evidence - Practice and Procedure - Board rejecting various motions, objections, allegations, requests and submissions made by employer and objecting employees, including objection to composition of the panel, submission that Board without jurisdiction to schedule certification application to be heard on consecutive day basis, allegations of abuse of process and of discrimination made against union, request that Board refuse to entertain application pursuant to section 105(2)(i) of the Act, objection to propriety of Form A-4 and to membership evidence filed by the union, and allegation of employer support for application contrary to section 13 of the Act - Certificate issuing - Board also critical of conduct of objecting employees' counsel and employer's counsel - Counsels' conduct throughout proceeding described as rude, interruptive, and intentionally disrespectful to tribunal - Counsel directed to attend before the Board to show cause why Board ought not to state case of contempt to Divisional Court or report counsels' conduct to Law Society of Upper Canada
- ROBERT M. HEENAN SALES LTD., AND ROBERT M. HEENAN, VIC MURAI HOLDINGS LTD. VIC MURAI; RE UFCW, LOCAL 175.....(Feb.) 106
- Contempt - Natural Justice - Practice and Procedure - Unfair Labour Practice - Union asking Board to state case for contempt against Chair of Management Board as result of press accounts of certain comments attributed to him regarding Labour Relations Board - Union also alleging that Board lacking requisite structural independence and reasonably perceived to be partial as result of government's recent removal of vice-chairs prior to expiry of terms of appointment, government's role in selection of the vice-chairs removed, recent re-appointment "at pleasure" of two vice-chairs, certain comments attributed to Chair of Management Board, and allegations regarding control of Chair of Management Board over Ministry of Labour's list of approved arbitrators - Vice-Chair presiding at hearing disclosing that he and all other vice-chairs possess information concerning process of selection of vice-chairs for removal, but declining to reveal content of that information - Board accepting respondents' submission that disclosure raising reasonable apprehension of bias - Board staying proceedings
- ONTARIO REALTY CORPORATION (ORC), DAVID JOHNSON, FRANK RAPOSO AND SIGNATURE BUILDING MAINTENANCE SYSTEMS; SEIU, LOCAL 204(Nov./Dec.) 998
- Contempt - Practice and Procedure - Certification - Board, in earlier decision, critical of conduct of objecting employees' counsel and employer's counsel - Counsel, in earlier decision, directed to attend before Board to show cause why Board ought not to state case of contempt to Divisional

Court or report counsels' conduct to Law Society of Upper Canada - Counsel submitting letter of apology prior to show cause hearing - Board accepting counsels' apologies but not explanations or justifications offered for their conduct - Board concluding that show cause hearing unnecessary - Proceeding terminated

ROBERT M. HEENAN SALES LTD.; RE UFCW; RE GROUP OF EMPLOYEES(Feb.) 153

Crown Employees Collective Bargaining Act - Employee - Interim Relief - Remedies - Union applying to have Board determine whether certain persons should be excluded from its bargaining units as result of Bill 7 changes to Crown Employees Collective Bargaining Act - Union also asking for interim order that disputed individuals not be excluded pending Board's determination of the issue - Board considering its jurisdiction to make interim orders and concluding that Bill 7 amendments only give Board power to make interim orders dealing with conduct of proceedings and related matters - Board also concluding that Statutory Powers Procedure Act ("SPPA") granting Board general power to grant interim orders and that that power prevails over conflicting provision in Labour Relations Act - Board indicating that it will exercise its SPPA interim order jurisdiction (where discharges and reinstatement requests are not in issue) in a manner similar to the approach previously utilized by the Board prior to Bill 7 - Board denying interim order request here because harm in granting or withholding interim order evenly balanced and because of union's stated inability to commence an adjudication on the merits for some considerable period

CROWN IN RIGHT OF ONTARIO OF ONTARIO REPRESENTED BY MANAGEMENT BOARD OF CABINET, THE; RE OPSEU; RE ASSOCIATION OF MANAGEMENT, ADMINISTRATION AND PROFESSIONAL CROWN EMPLOYEES OF ONTARIO (AMAP-CEO).....(Sept./Oct.) 780

Crown Employees Collective Bargaining Act - Essential Services Agreement - Judicial Review - Natural Justice - Board designating 26 Meat Inspectors as essential but only in order to monitor that no illegal slaughter of animals taking place - Board's order effectively shutting down slaughtering operations at provincially licensed premises - Various meat packers and processors seeking expedited judicial review before single judge on basis of urgency under section 6(2) of Judicial Review Procedure Act (JRPA) - Meat packers alleging that Board's decision patently unreasonable and that failure of Board to give notice to meat packers of Board's proceeding constituting denial of natural justice - Court granting leave to hear application under section 6(2) of JRPA, but dismissing application

WESTON ABATTOIR LTD., BARRON POULTRY LIMITED, MORRISON MEAT PACKERS LIMITED, BELWOOD POULTRY LTD. AND THE ONTARIO INDEPENDENT MEAT PACKERS AND PROCESSORS SOCIETY; RE OPSEU, THE CROWN IN RIGHT OF ONTARIO REPRESENTED BY MANAGEMENT BOARD OF CABINET - ADMINISTRATIVE UNIT AND THE OLRB.....(Feb.) 181

Crown Employees Collective Bargaining Act - Essential Services Agreement - Management Board applying under Crown Employees Collective Bargaining Act to vary essential services order made 10 months earlier - Earlier order declaring that essential service work for meat inspectors during strike or lockout in OPSEU bargaining unit limited to monitoring meat processing operations to ensure that no illegal slaughter occurring - Management Board seeking order permitting limited inspection of meat processing operations or, alternatively, amendment to essential services agreement providing for more inspectors to monitor operations if slaughtering not to occur - Board declining to vary its earlier order or to amend essential services agreement, but parties directed to negotiate emergency services protocol of meat inspectors mirtha

MANAGEMENT BOARD OF CABINET, THE CROWN IN RIGHT OF ONTARIO, AS REPRESENTED BY; RE OPSEU(Mar./Apr.) 284

Discharge - Adjudication - Certification - Certification Where Act Contravened - Construction Industry - Practice and Procedure - Remedies - Unfair Labour Practice - Board not satisfied

that medical evidence justifying employer's inability to attend at Board hearing - Adjournment request denied - Board finding employer's threats to close business and subsequent layoff of employees in violation of the Act - Union certified under section 11(1) of the Act

BALKAN GLASS & ALUMINUM INC.; RE PAT, LOCAL UNION 1819
(GLAZIERS) (Sept./Oct.) 717

Discharge - Certification - Certification Where Act Contravened - Construction Industry - Interference in Trade Unions - Intimidation and Coercion - Unfair Labour Practice - Certification application filed under old Labour Relations Act caught by transition provisions of Bill 7 and determined under new Labour Relations Act, 1995 - Board finding that employer violating the Act in discharging union supporter and in circulating questionnaire inquiring about employees' union membership - Board directing that discharged employee be compensated for lost earnings - Board also certifying union under section 11 of the Act

CULLITON BROTHERS LIMITED; RE IBEW, LOCAL 804; RE GROUP OF
EMPLOYEES (July/Aug.) 593

Discharge - Certification - Certification Where Act Contravened - Discharge for Union Activity - Interference in Trade Unions - Unfair Labour Practice - Board finding that employer violated the Act in promoting an employee association in the face of the union organizing campaign and in indefinitely suspending the lead inside union organizer - Board certifying union under section 11(1) of the Act

BURLINGTON GOLF & COUNTRY CLUB LIMITED; RE CANADIAN UNION OF OP-
ERATING ENGINEERS AND GENERAL WORKERS (July/Aug.) 505

Discharge - Colleges Collective Bargaining Act - Duty of Fair Representation - Health and Safety - Practice and Procedure - Unfair Labour Practice - Applicant complaining about union's handling of various grievances and about conduct of College alleged to have caused stress and to constitute workplace hazard- Board exercising its discretion not to inquire into complaint under Colleges Collective Bargaining Act because of delay and because no labour relations purpose would be served by the inquiry - Application under Occupational Health and Safety Act (OHSA), except for issue of separation from employment, dismissed for delay - Application under OHSA dealing with termination stayed by Board pending outcome of complaints filed by applicant with Human Rights Commission

GAZIT, DAVID; RE OPSEU; RE GEORGE BROWN COLLEGE (July/Aug.) 635

Discharge - Construction Industry - Interference with Local Trade Unions - Applicant alleging that he was removed from office of Business Representative of Carpenters' union Local 27 by decision of International union taken without just cause contrary to Bill 80 amendments to the Act - Board finding that section 149(2) of the Act does not create rights to protect an individual except as necessary to protect the local union's autonomy - Board dismissing application as no issue of local autonomy advanced before it

DORINGTON SMITH; RE CJA; RE CJA, LOCAL 27 (July/Aug.) 621

Discharge - Evidence - Health and Safety - Judicial Review - Practice and Procedure - Applicant alleging violation of Occupational Health and Safety Act on basis of discharge described as reprisal for complaint of sexual harassment in workplace - Board declining to dismiss application without a hearing for want of *prima facie* case - Employer's application for judicial review dismissed as premature by Divisional Court

LYNDHURST HOSPITAL; RE PAULINE AU AND THE ONTARIO LABOUR RELATIONS
BOARD (Sept./Oct.) 902

Discharge - Evidence - Health and Safety - Practice and Procedure - Applicant alleging violation of Occupational Health and Safety Act on basis of discharge described as reprisal for complaint of sexual harassment in workplace - Board earlier issuing bottom line decision declining to

dismiss application without a hearing for want of prima facie case - Board concluding that it is not plain and obvious that complaint has no chance of success - Board finding that there is arguable case that sexual harassment is hazard covered by Occupational Health and Safety Act and that complaint may be successful even if it is not	
LYNDHURST HOSPITAL; RE PAULINE AU	(May/June) 456
Discharge for Union Activity - Certification - Certification Where Act Contravened - Discharge - Interference in Trade Unions - Unfair Labour Practice - Board finding that employer violated the Act in promoting an employee association in the face of the union organizing campaign and in indefinitely suspending the lead inside union organizer - Board certifying union under section 11(1) of the Act	
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Duty to Bargaining in Good Faith - Practice and Procedure - Unfair Labour Practice - Board exercising its discretion not to inquire into union's unfair labour practice complaint where existence of arguable case far from clear and where litigating the matter would do nothing to further the parties' collective bargaining or their labour relations in general

ORENDA AEROSPACE CORPORATION; RE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL LODGE 1922..... (May/June)

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Employee - Bargaining Unit - Construction Industry - Grievance - Termination - Board ruling that non-ICI collective agreement between employer and Labourers' union not covering work performed in the "yard" on the termination application date - Accordingly, Board determining that no one working in bargaining unit on application date - Termination application dismissed

GAVIGAN CONTRACTING LTD.; RE LIUNA, LOCAL 1059 (May/June)

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Employee - Certification - Construction Industry - Natural Justice - Reconsideration - Representation Vote - Settlement - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing

B & B ELECTRIC CO. DIVISION OF ELECTROBAUER SYSTEMS LIMITED AND/OR ELECTROBAUER LIMITED; RE IBEW, LOCAL 353.....(Nov./Dec.)

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Employee - Certification - Construction Industry - Representation Vote - Board not accepting employer's submission that employees not employed on the certification application filing date should

be entitled to cast ballots in representation vote - Board finding contested employee to be employed in bargaining unit on application date - Board directing Registrar to have ballots counted in accordance with its decision

KEN ANDERSON ELECTRIC INC.; RE IBEW, LOCAL 402(Sept./Oct.) 846

Employee - Certification - Judicial Review - Board finding that thirteen lead hands employed at employer's production facility exercising managerial functions and not "employees" for purposes of the Act - Certificate issuing - Employer seeking expedited judicial review of Board's decision before single judge - Court denying leave under section 6(2) of Judicial Review Procedure Act to have application heard by single judge - Application transferred to Divisional Court

GOURMET BAKER INC.; RE THE UNITED STEELWORKERS OF AMERICA AND THE ONTARIO LABOUR RELATIONS BOARD(Nov./Dec.) 1015

Employee - Charges - Construction Industry - Employer Initiation - Intimidation and Coercion - Termination - Board rejecting union's argument that newly enacted subsection 63(16) of the Act confirming Board's historical practice of requiring applicant in termination proceedings to establish voluntariness of petition - Board expressing view that hearing under subsection 63(16) should be convened only where allegations of misconduct have been pleaded in such a manner as to establish *prima facie* case of employer initiation or employer threats and coercion - Board considering relevance of rule in *April Waterproofing* case after Bill 7 and concluding that union may still allege in termination application that one or more employees on the application date had been hired contrary to the collective agreement and therefore unable to properly cast a ballot in a representation vote

ELIRPA CONSTRUCTION AND MATERIALS LIMITED; RE KEVIN SMITH AND CLIFFORD WILKINSON; RE IUOE, LOCAL 793(Jan.) 4

Employee - Construction Industry - Construction Industry Grievance - Judicial Review - Board finding off-site fabrication shop employees to be employees in the construction industry and holding that, when engaged in fabrication of ductwork destined for ICI job site, their work is covered by ICI agreement - Application for judicial review dismissed by Divisional Court

DURASYSTEMS BARRIERS INC., DUFFY MECHANICAL CONTRACTORS LIMITED AND; RE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 30 AND ONTARIO LABOUR RELATIONS BOARD(Sept./Oct.) 901

Employee - Crown Employees Collective Bargaining Act - Interim Relief - Remedies - Union applying to have Board determine whether certain persons should be excluded from its bargaining units as result of Bill 7 changes to Crown Employees Collective Bargaining Act - Union also asking for interim order that disputed individuals not be excluded pending Board's determination of the issue - Board considering its jurisdiction to make interim orders and concluding that Bill 7 amendments only give Board power to make interim orders dealing with conduct of proceedings and related matters - Board also concluding that Statutory Powers Procedure Act ("SPPA") granting Board general power to grant interim orders and that that power prevails over conflicting provision in Labour Relations Act - Board indicating that it will exercise its SPPA interim order jurisdiction (where discharges and reinstatement requests are not in issue) in a manner similar to the approach previously utilized by the Board prior to Bill 7 - Board denying interim order request here because harm in granting or withholding interim order evenly balanced and because of union's stated inability to commence an adjudication on the merits for some considerable period

CROWN IN RIGHT OF ONTARIO OF ONTARIO REPRESENTED BY MANAGEMENT BOARD OF CABINET, THE; RE OPSEU; RE ASSOCIATION OF MANAGEMENT, ADMINISTRATION AND PROFESSIONAL CROWN EMPLOYEES OF ONTARIO (AMAP-CEO)(Sept./Oct.) 780

Employee - Employee Reference - Employer asking Board to exercise its discretion not to entertain union's application regarding "employee" status of newspaper's "weekend editor" - Employer asserting that union delayed in bringing application - Employer also asserting that no useful labour relations purpose would be served by determining issue of "employee" status because underlying issue would be resolved in employer's favour at arbitration dealing with question of inclusion/exclusion from bargaining unit - Board not accepting employer's assertions and authorizing Labour Relations Officer to inquire into weekend editor's duties and responsibilities THOMSON NEWSPAPERS COMPANY LIMITED (GUELPH MERCURY DIVISION); RE SOUTHERN ONTARIO NEWSPAPER GUILD LOCAL 87, THE NEWSPAPER GUILD (Mar./Apr.)	331
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Employer Initiation - Charges - Intimidation and Coercion - Construction Industry - Representation Vote - Termination - In response to termination application, union seeking dismissal under subsection 63(16) of the Act and pleading material facts sufficient to establish <i>prima facie</i> case of employer initiation or employer threats and intimidation in connection with application - Board directing that representation vote be deferred until determination of allegations raised by union and listing matter for hearing ONTARIO TRUSS AND WALL, 520601 ONTARIO LTD., O/A; RE IAN CROCKFORD ET AL; RE CJA AND ITS LOCAL 1030..... (Jan.)	24
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COVERTITE EASTERN LIMITED; RE CLAC, LOCAL 52; RE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 47 (May/June)

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Employer Support - Certification - Contempt - Evidence - Membership Evidence - Practice and Procedure - Board rejecting various motions, objections, allegations, requests and submissions made by employer and objecting employees, including objection to composition of the panel, submission that Board without jurisdiction to schedule certification application to be heard on consecutive day basis, allegations of abuse of process and of discrimination made against union, request that Board refuse to entertain application pursuant to section 105(2)(i) of the Act, objection to propriety of Form A-4 and to membership evidence filed by the union, and allegation of employer support for application contrary to section 13 of the Act - Certificate issuing - Board also critical of conduct of objecting employees' counsel and employer's counsel - Counsels' conduct throughout proceeding described as rude, interruptive, and intentionally disrespectful to tribunal - Counsel directed to attend before the Board to show cause why Board ought not to state case of contempt to Divisional Court or report counsels' conduct to Law Society of Upper Canada

ROBERT M. HEENAN SALES LTD., AND ROBERT M. HEENAN, VIC MURAI HOLDINGS LTD. VIC MURAI; RE UFCW, LOCAL 175..... (Feb.)

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J.P. MURPHY INC.; RE ONTARIO (ONTARIO LABOUR RELATIONS BOARD) AND USWA..... (Jan.)

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Essential Services Agreement - Crown Employees Collective Bargaining Act - Judicial Review - Natural Justice - Board designating 26 Meat Inspectors as essential but only in order to monitor that no illegal slaughter of animals taking place - Board's order effectively shutting down slaughtering operations at provincially licensed premises - Various meat packers and processors seeking expedited judicial review before single judge on basis of urgency under section 6(2) of Judicial Review Procedure Act (JRPA) - Meat packers alleging that Board's decision patently unreasonable and that failure of Board to give notice to meat packers of Board's proceeding constituting denial of natural justice - Court granting leave to hear application under section 6(2) of JRPA, but dismissing application

WESTON ABATTOIR LTD., BARRON POULTRY LIMITED, MORRISON MEAT PACKERS LIMITED, BELWOOD POULTRY LTD. AND THE ONTARIO INDEPENDENT MEAT PACKERS AND PROCESSORS SOCIETY; RE OPSEU, THE CROWN IN RIGHT OF ONTARIO REPRESENTED BY MANAGEMENT BOARD OF CABINET - ADMINISTRATIVE UNIT AND THE OLRB..... (Feb.)

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Essential Services Agreement - Crown Employees Collective Bargaining Act - Management Board applying under Crown Employees Collective Bargaining Act to vary essential services order made 10 months earlier - Earlier order declaring that essential service work for meat inspectors during strike or lockout in OPSEU bargaining unit limited to monitoring meat processing operations to ensure that no illegal slaughter occurring - Management Board seeking order permitting limited inspection of meat processing operations or, alternatively, amendment to essential services agreement providing for more inspectors to monitor operations if slaughtering

not to occur - Board declining to vary its earlier order or to amend essential services agreement, but parties directed to negotiate emergency services protocol of meat inspectors

MANAGEMENT BOARD OF CABINET, THE CROWN IN RIGHT OF ONTARIO, AS REPRESENTED BY; RE OPSEU (Mar./Apr.) 284

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J.P. MURPHY INC.; RE ONTARIO (ONTARIO LABOUR RELATIONS BOARD) AND USWA (Jan.) 54

Evidence - Certification - Judicial Review - Trade Union - Trade Union Status - Steelworkers' union applying for certification at workplace with employees' association - Union arguing that association not a "trade union" within meaning of the Act and that Board should certify Steelworkers' without representation vote - Employees' association having twenty-year history of negotiating agreements with employer setting out terms and conditions of employment, but association having no constitution and no members - Board finding that association not a trade union - Certificate issuing - Employer applying for judicial review and alleging that Board's decision patently unreasonable and based on findings of fact for which there was no evidence - Application for judicial review dismissed by Divisional Court

KUBOTA METAL CORPORATION FAHRAMET DIVISION; RE USWA AND ONTARIO LABOUR RELATIONS BOARD (May/June) 504

Evidence - Certification - Practice and Procedure - Union winning representation vote but employer asserting that certificate should not issue - Employer submitting that Board mistakenly determined that there was appearance of more than 40% union support and that vote should not have been directed - Board rejecting employer's argument and affirming its practice under Bill 7 of

looking only at information provided by union with its application when determining existence of appearance of 40% support - Board also explaining its inclination, where possible, to count ballots so that "quick votes" under Bill 7 are followed by quick results - Certificate issuing	
CORPORATION OF CITY OF TORONTO ("THE EMPLOYER"); RE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79 ("THE UNION" OR "CUPE")..... (July/Aug.)	552
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RAPID FORMING INC., CARPENTERS AND ALLIED WORKERS LOCAL 27, CJA AND; RE LIUNA, LOCAL 506 (Jan.)	26
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arguable case that sexual harassment is hazard covered by Occupational Health and Safety Act and that complaint may be successful even if it is not

LYNDHURST HOSPITAL; RE PAULINE AU	(May/June)	456
Evidence - Health and Safety - Practice and Procedure - Applicant employee alleging unlawful reprisal in violation of Occupational Health and Safety Act and seeking to rely on physicians' medical reports - Responding employer objecting to medical reports being received in absence of viva voce testimony from physicians involved - Responding employer summoning certain medical records of applicant from physicians - Applicant opposing their introduction - Board ruling that onus of calling physicians resting with applicant		
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Evidence - Security Guard - Practice and Procedure - Employer seeking to terminate union's bargaining rights for bargaining unit of guards under transitional provisions of Bill 7 - Employer asserting that as result of 1994 Board decision in connection with application to combine bargaining units and that decision's conflict of interest finding, doctrine of issue estoppel applying such that Board should terminate union's bargaining rights without need for further hearing - Board concluding that issues in earlier decision and in current proceeding under Bill 7 not the same and that matter ought not to be resolved without affording the union an opportunity for a hearing		
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First Contract Arbitration - Practice and Procedure - Termination - Application to terminate union's bargaining rights brought after four days of hearing in union's first contract application - Termination applicants asking Board to allow termination application to proceed ahead of first contract application and asking Board to direct representation vote - Board deciding to proceed with first contract application		
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First Contract Arbitration - Practice and Procedure - Termination - Union's first contract application pending before Board - Employees subsequently filing termination application - Union's response to termination application including allegations of employer initiation or interference in connection with application - Union seeking dismissal of application under section 63(16) of the Act - Board determining that representation vote ought not to be held at this stage and that first contract application and termination application be listed together for hearing EAST SIDE MARIO'S, BIRSSA HOLDINGS INC. C.O.B. AS; RE LYNDA ANN FALVO; RE UFCW, LOCAL 175/633	(Sept./Oct.)	810
Fraud - Construction Industry - Termination - Union certified following failure of employer to respond to application - Employer subsequently seeking to terminate bargaining rights for alleged fraud - Employer alleging that union filed membership evidence on behalf of employees who were not its employees - Employer's application dismissed for failure to make out <i>prima facie</i> case LAW DEVELOPMENT GROUP; CARPENTERS AND ALLIED WORKERS LOCAL 27, CJA	(Jan.)	13
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Health and Safety - Colleges Collective Bargaining Act - Discharge - Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Applicant complaining about union's handling of various grievances and about conduct of College alleged to have caused stress and to constitute workplace hazard- Board exercising its discretion not to inquire into complaint under Colleges Collective Bargaining Act because of delay and because no labour relations purpose would be served by the inquiry - Application under Occupational Health and Safety Act (OHSA), except for issue of separation from employment, dismissed for delay - Application under OHSA dealing with termination stayed by Board pending outcome of complaints filed by applicant with Human Rights Commission GAZIT, DAVID; RE OPSEU; RE GEORGE BROWN COLLEGE	(July/Aug.)	635
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Health and Safety - Discharge - Evidence - Practice and Procedure - Applicant alleging violation of Occupational Health and Safety Act on basis of discharge described as reprisal for complaint of sexual harassment in workplace - Board earlier issuing bottom line decision declining to dismiss application without a hearing for want of <i>prima facie</i> case - Board concluding that it is not plain and obvious that complaint has no chance of success - Board finding that there is arguable case that sexual harassment is hazard covered by Occupational Health and Safety Act and that complaint may be successful even if it is not LYNDHURST HOSPITAL; RE PAULINE AU	(May/June)	456
Health and Safety - Employee alleging that she was penalized for complaining about sexual harassment in the workplace in violation of Occupational Health and Safety Act (OHSA) - Board finding that sexual harassment arguably covered by OHSA, but that there is also a good		

argument that it is not - Board also finding that sexual harassment central to jurisdiction and expertise of Ontario Human Rights Commission and to tribunals established under Ontario Human Rights Code - Board deferring to procedures of the Code and the Commission and exercising its discretion under section 50(3) of the OHSA not to inquire into complaint

MERIDIAN MAGNESIUM PRODUCTS LIMITED, ("MERIDIAN"); RE PATRICIA MUSTY(Nov./Dec.) 964

Health and Safety - Evidence - Practice and Procedure - Applicant employee alleging unlawful reprisal in violation of Occupational Health and Safety Act and seeking to rely on physicians' medical reports - Responding employer objecting to medical reports being received in absence of viva voce testimony from physicians involved - Responding employer summoning certain medical records of applicant from physicians - Applicant opposing their introduction - Board ruling that onus of calling physicians resting with applicant

IMMIGRANT WOMEN'S HEALTH CENTRE; RE RUTH KIDANE (May/June) 454

Interference in Trade Unions - Certification - Certification Where Act Contravened - Intimidation and Coercion - Reconsideration - Unfair Labour Practice - Board finding that employer removal of key inside union organizer from workplace and subsequent reassignment tainted by anti-union animus - Board also finding that various steps to increase managerial presence in workplace during organizing campaign coloured by anti-union motivation - Board certifying union under section 9.2 of "old" Labour Relations Act - Employer seeking reconsideration of decision on grounds that "bottom line" decision (without reasons) issued on November 10, 1995 was not "final" decision for purposes of transitional provisions of Bill 7 - Employer submitting that Board ought to have decided case under section 11(1) of "new" Labour Relations Act - Board noting that absence of reasons not undermining dispositive effect of "bottom line" decision and that Bill 7 requiring that "new" Act apply retroactively only where no final decision having issued on November 10, 1995 - Reconsideration application dismissed

SHOPPERS DRUG MART, ASM DISPENSARIES LIMITED C.O.B. AS; RE USWA; RE GROUP OF EMPLOYEES(Mar./Apr.) 303

Interference in Trade Unions - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Intimidation and Coercion - Unfair Labour Practice - Certification application filed under old Labour Relations Act caught by transition provisions of Bill 7 and determined under new Labour Relations Act, 1995 - Board finding that employer violating the Act in discharging union supporter and in circulating questionnaire inquiring about employees' union membership - Board directing that discharged employee be compensated for lost earnings - Board also certifying union under section 11 of the Act

CULLITON BROTHERS LIMITED; RE IBEW, LOCAL 804; RE GROUP OF EMPLOYEES..... (July/Aug.) 593

Interference in Trade Unions - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Unfair Labour Practice - Board finding that employer violated the Act in promoting an employee association in the face of the union organizing campaign and in indefinitely suspending the lead inside union organizer - Board certifying union under section 11(1) of the Act

BURLINGTON GOLF & COUNTRY CLUB LIMITED; RE CANADIAN UNION OF OPERATING ENGINEERS AND GENERAL WORKERS (July/Aug.) 505

Interference in Trade Unions - Certification - Certification Where Act Contravened - Intimidation and Coercion - Remedies - Unfair Labour Practice - After receiving copy of union's certification application, employer meeting with employees one-to-one and asking them to sign personalized declaration opposing trade union - Employer acting on legal advice and in belief that he was acting in compliance with Board's rules - Only one of five employees subsequently casting ballot in representation vote - Union losing vote - Board setting aside representation vote and

directing new vote - Employer directed to cease and desist violating Act, to post decision and attached notice in workplace and to mail copy to each employee at home, and to provide union opportunity to address employees at meeting held during normal working hours - Union's application to be certified under section 11(1) of the Act dismissed

MAVERICK MECHANICAL CONTRACTORS LIMITED; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION..... (Mar./Apr.)

289

Interference in Trade Unions - Construction Industry - Remedies - Termination - Unfair Labour Practice - Prior to directing representation vote, Board inquiring into union's allegation that employer initiated termination application within meaning of section 63(16) of the Act - Board finding involvement of employer in early stage of process leading to termination application - Board holding that termination application founded in employer's initiation should result in its dismissal absent compelling labour relations reasons why vote should still be held - Termination application dismissed under section 63(16) of the Act - Union's unfair labour practice application alleging interference with union's representation of employees allowed - Cease and desist order issuing

BYTOWN ELECTRICAL SERVICES LTD.; RE SHAWN JOSEPH ARSENAULT; RE IBEW AND THE IBEW CONSTRUCTION COUNCIL OF ONTARIO, LOCALS 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, 894, 1687 AND 1739..... (Sept./Oct.)

721

Interference with Local Trade Unions - Construction Industry - Discharge - Applicant alleging that he was removed from office of Business Representative of Carpenters' union Local 27 by decision of International union taken without just cause contrary to Bill 80 amendments to the Act - Board finding that section 149(2) of the Act does not create rights to protect an individual except as necessary to protect the local union's autonomy - Board dismissing application as no issue of local autonomy advanced before it

DORINGTON SMITH; RE CJA; RE CJA, LOCAL 27 (July/Aug.)

621

Interim Relief - Construction Industry - Remedies - Unfair Labour Practice - Applicants alleging that International union, through trusteeship has made unlawful use of local union's assets, has improperly imposed dues increase on members and has conducted itself improperly in negotiating new collective agreements to detriment of members of local union - Applicants seeking interim order staying implementation of new collective agreements - Board concluding that it is without jurisdiction under section 98 of the Act to grant the interim order sought, but that Statutory Powers Procedure Act confers jurisdiction on Board to provide substantive interim relief, including the order sought - Board dismissing application for interim relief because of applicants' undue delay

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, KEN WOODS, ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL UNION 1788 BY ITS TRUSTEE, IBEW AND ONTARIO HYDRO AND EPSCA; RE POWER WORKERS' UNION - CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT, AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF IBEW, LOCAL UNION 1788 (Sept./Oct.)

826

Interim Relief - Crown Employees Collective Bargaining Act - Employee - Remedies - Union applying to have Board determine whether certain persons should be excluded from its bargaining units as result of Bill 7 changes to Crown Employees Collective Bargaining Act - Union also asking for interim order that disputed individuals not be excluded pending Board's determination of the issue - Board considering its jurisdiction to make interim orders and concluding that Bill 7 amendments only give Board power to make interim orders dealing with conduct of proceedings and related matters - Board also concluding that Statutory Powers Procedure Act ("SPPA") granting Board general power to grant interim orders and that that power prevails over conflicting provision in Labour Relations Act - Board indicating that it

will exercise its SPPA interim order jurisdiction (where discharges and reinstatement requests are not in issue) in a manner similar to the approach previously utilized by the Board prior to Bill 7 - Board denying interim order request here because harm in granting or withholding interim order evenly balanced and because of union's stated inability to commence an adjudication on the merits for some considerable period

CROWN IN RIGHT OF ONTARIO OF ONTARIO REPRESENTED BY MANAGEMENT BOARD OF CABINET, THE; RE OPSEU; RE ASSOCIATION OF MANAGEMENT, ADMINISTRATION AND PROFESSIONAL CROWN EMPLOYEES OF ONTARIO (AMAP-CEO).....(Sept./Oct.)

780

Interim Relief - Remedies - Trusteeship - International union seeking to extend trusteeship over local beyond 12 month period - Application to extend trusteeship filed 12 days before statutory expiry of trusteeship - International union asking to extend trusteeship on interim basis pending disposition of main request - Request for interim extension of trusteeship dismissed - International directed to forward notices and copies of Board's decision to all members of local

IBEW; RE IBEW, LOCAL 1788.....(Mar./Apr.)

244

Intimidation and Coercion - Certification - Certification Where Act Contravened - Interference in Trade Unions - Reconsideration - Unfair Labour Practice - Board finding that employer removal of key inside union organizer from workplace and subsequent reassignment tainted by anti-union animus - Board also finding that various steps to increase managerial presence in workplace during organizing campaign coloured by anti-union motivation - Board certifying union under section 9.2 of "old" Labour Relations Act - Employer seeking reconsideration of decision on grounds that "bottom line" decision (without reasons) issued on November 10, 1995 was not "final" decision for purposes of transitional provisions of Bill 7 - Employer submitting that Board ought to have decided case under section 11(1) of "new" Labour Relations Act - Board noting that absence of reasons not undermining dispositive effect of "bottom line" decision and that Bill 7 requiring that "new" Act apply retroactively only where no final decision having issued on November 10, 1995 - Reconsideration application dismissed

SHOPPERS DRUG MART, ASM DISPENSARIES LIMITED C.O.B. AS; RE USWA; RE GROUP OF EMPLOYEES(Mar./Apr.)

303

Intimidation and Coercion - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Interference in Trade Unions - Unfair Labour Practice - Certification application filed under old Labour Relations Act caught by transition provisions of Bill 7 and determined under new Labour Relations Act, 1995 - Board finding that employer violating the Act in discharging union supporter and in circulating questionnaire inquiring about employees' union membership - Board directing that discharged employee be compensated for lost earnings - Board also certifying union under section 11 of the Act

CULLITON BROTHERS LIMITED; RE IBEW, LOCAL 804; RE GROUP OF EMPLOYEES.....(July/Aug.)

593

Intimidation and Coercion - Certification - Certification Where Act Contravened - Interference in Trade Unions - Remedies - Unfair Labour Practice - After receiving copy of union's certification application, employer meeting with employees one-to-one and asking them to sign personalized declaration opposing trade union - Employer acting on legal advice and in belief that he was acting in compliance with Board's rules - Only one of five employees subsequently casting ballot in representation vote - Union losing vote - Board setting aside representation vote and directing new vote - Employer directed to cease and desist violating Act, to post decision and attached notice in workplace and to mail copy to each employee at home, and to provide union opportunity to address employees at meeting held during normal working hours - Union's application to be certified under section 11(1) of the Act dismissed

MAVERICK MECHANICAL CONTRACTORS LIMITED; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION.....(Mar./Apr.)

289

Intimidation and Coercion - Certification - Change in Working Conditions Evidence - Construction Industry - Evidence - Practice and Procedure - Representation Vote - Unfair Labour Practice - Witness - After conducting inquiry into witness's alleged prior inconsistent statement, Board declining to declare witness hostile or adverse - Board concluding that union used charges and threat of charges under its constitution to intimidate employees into supporting certification application - Certification application dismissed under section 11(2) of the Act - Board finding that employer violated statutory freeze when it changed wage rate it had agreed to pay to two employees - Compensation ordered	
CENTRO MECHANICAL INC.; RE UA, AND ITS LOCAL 221	(Sept./Oct.) 762
Intimidation and Coercion - Certification - Employer Support - Evidence - Judicial Review - Natural Justice - Practice and Procedure - Employer's allegations of unlawful employer support for certification application and unlawful intimidation of employees dismissed by Board for disclosing no <i>prima facie</i> case - Employer applying for judicial review on several grounds including alleged denial of natural justice - Application for judicial review dismissed by Divisional Court	
J.P. MURPHY INC.; RE ONTARIO (ONTARIO LABOUR RELATIONS BOARD) AND USWA	(Jan.) 54
Intimidation and Coercion - Certification - Representation Vote - Union winning representation vote but employer seeking dismissal of certification application under section 11(2) of the Act - Employer alleging that union official accosted voters outside as they approached building to cast ballots in representation vote - Employer submitting that such conduct depriving employees of ability to freely express true wishes - Board rejecting employer's submission - Certificate issuing	
CITIPARK INC.; RE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C.	(May/June) 367
Intimidation and Coercion - Charges - Construction Industry - Employee - Employer Initiation - Termination - Board rejecting union's argument that newly enacted subsection 63(16) of the Act confirming Board's historical practice of requiring applicant in termination proceedings to establish voluntariness of petition - Board expressing view that hearing under subsection 63(16) should be convened only where allegations of misconduct have been pleaded in such a manner as to establish <i>prima facie</i> case of employer initiation or employer threats and coercion - Board considering relevance of rule in <i>April Waterproofing</i> case after Bill 7 and concluding that union may still allege in termination application that one or more employees on the application date had been hired contrary to the collective agreement and therefore unable to properly cast a ballot in a representation vote	
ELIRPA CONSTRUCTION AND MATERIALS LIMITED; RE KEVIN SMITH AND CLIFFORD WILKINSON; RE IUOE, LOCAL 793	(Jan.) 4
Intimidation and Coercion - Charges - Employer Initiation - Construction Industry - Representation Vote - Termination - In response to termination application, union seeking dismissal under subsection 63(16) of the Act and pleading material facts sufficient to establish <i>prima facie</i> case of employer initiation or employer threats and intimidation in connection with application - Board directing that representation vote be deferred until determination of allegations raised by union and listing matter for hearing	
ONTARIO TRUSS AND WALL, 520601 ONTARIO LTD., O/A; RE IAN CROCKFORD ET AL; RE CJA AND ITS LOCAL 1030	(Jan.) 24
Intimidation and Coercion - Representation Vote - Termination - Group of employees alleging that vocal and active union supporter uttered threats and otherwise intimidated employees in days leading up to representation vote - Union winning vote - Employees requesting new vote - Board satisfied that there were no threats or intimidation and seeing no reason why result of	

vote should not be considered accurate representation of employees' wishes - Application dismissed

VENEST INDUSTRIES, A DIVISION OF COSMA INTERNATIONAL INC.; RE MAURICE BEAUDOIN AND LARRY SAWATSKY; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CAN-ADA) AND ITS LOCAL 199 CAW (May/June)

499

Judicial Review - Abandonment - Bargaining Rights - Constitutional Law - Construction Industry - Construction Industry Grievance - Board finding constitutional issue raised by employer to be *res judicata* - Fact that there was little contact between union and employer or its employees, or fact that grievances were not filed in all instances of violation of collective agreement (in absence of unambiguous evidence that union knew or reasonably ought to have known of those violations and did nothing) insufficient to warrant finding that union abandoned bargaining rights - Board finding that essential elements of estoppel established in relation to both conduct of local union filing grievance and the employee bargaining agency and other ABAs holding bargaining rights for employer's employees - Board deciding that notice bringing estoppel to an end coming with Board's decision - Board dismissing grievance but declaring that employer bound to recognize union's bargaining rights and bound to existing provincial agreement - Employer's application for judicial review dismissed by Divisional Court

TORONTO-DOMINION BANK, THE; RE CJA, LOCAL 785 AND THE OLRB..(Sept./Oct.)

903

Judicial Review - Adjournment - Natural Justice - Reconsideration - Related Employer - Remedies - Board declaring that some 128 associates of three taxi brokers, together with each of their respective brokers, should be treated as one employer for purposes of the Act - Board making additional orders and directions in accordance with earlier agreement made between union, brokers and group of 47 associates setting up bargaining infrastructure and giving associates formal role in negotiating process - Divisional Court dismissing application for judicial review alleging that decision patently unreasonable and that applicants were denied natural justice

PETER'S TAXI LIMITED, SANDRA MANDRONIS, MATINA MANDRONIS, NORTH-LAND TAXI AND SAHIB SINGH GHAI, CARL ROTMAN, NOAH ROTMAN, 896896 ONTARIO LTD. O/A LAKESHORE GARAGE, CHRIS CHRONOPOULOS,; RE THE ONTARIO LABOUR RELATIONS BOARD AND RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCAL 1688.....(Sept./Oct.)

902

Judicial Review - Bargaining Unit - Certification - IPC seeking to displace CEP Local 338 as bargaining agent for certain maintenance employees of paper mill - CEP Locals 212 and 338 asserting that established bargaining structure involving single bargaining unit including all maintenance and production employees, and that IPC should not be allowed to carve out bargaining unit from existing structure - Board finding that established bargaining structure was one bargaining unit and dismissing IPC's application - IPC's application for judicial review dismissed by Divisional Court

DOMTAR INC. COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, C.L.C. LOCAL 212 AND 338 AND THE OLRB; RE INDEPENDENT PAPERWORKERS OF CANADA(Jan.)

53

Judicial Review - Certification - Construction Industry - Employer - Board finding that personnel agencies not the employers of electricians for whom union seeking bargaining rights - Certification applications dismissed - Union's application for judicial review dismissed by Divisional Court

DARE PERSONNEL INC. AND 1092009 ONTARIO INC. C.O.B. PERSONNEL FORCE AND ONTARIO LABOUR RELATIONS BOARD; RE IBEW, LOCAL 586(Nov./Dec.)

1014

Judicial Review - Certification - Employee - Board finding that thirteen lead hands employed at employer's production facility exercising managerial functions and not "employees" for purposes of the Act - Certificate issuing - Employer seeking expedited judicial review of Board's decision before single judge - Court denying leave under section 6(2) of Judicial Review Procedure Act to have application heard by single judge - Application transferred to Divisional Court

GOURMET BAKER INC.; RE THE UNITED STEELWORKERS OF AMERICA AND THE ONTARIO LABOUR RELATIONS BOARD(Nov./Dec.) 1015

Judicial Review - Certification - Employer Support - Evidence - Intimidation and Coercion - Natural Justice - Practice and Procedure - Employer's allegations of unlawful employer support for certification application and unlawful intimidation of employees dismissed by Board for disclosing no *prima facie* case - Employer applying for judicial review on several grounds including alleged denial of natural justice - Application for judicial review dismissed by Divisional Court

J.P. MURPHY INC.; RE ONTARIO (ONTARIO LABOUR RELATIONS BOARD) AND USWA(Jan.) 54

Judicial Review - Certification - Evidence - Trade Union - Trade Union Status - Steelworkers' union applying for certification at workplace with employees' association - Union arguing that association not a "trade union" within meaning of the Act and that Board should certify Steelworkers' without representation vote - Employees' association having twenty-year history of negotiating agreements with employer setting out terms and conditions of employment, but association having no constitution and no members - Board finding that association not a trade union - Certificate issuing - Employer applying for judicial review and alleging that Board's decision patently unreasonable and based on findings of fact for which there was no evidence - Application for judicial review dismissed by Divisional Court

KUBOTA METAL CORPORATION FAHRAMET DIVISION; RE USWA AND ONTARIO LABOUR RELATIONS BOARD(May/June) 504

Judicial Review - Charter of Rights and Freedoms - Constitutional Law - Construction Industry - Ontario Construction Secretariat bringing complaint against Labourers' union and Sheet Metal Workers' union for failure to remit payments to it contrary to section 155 of the Act - Responding unions asserting that section 155 of the Act and O.Reg. 187/93 unconstitutional and ought not to be enforced by the Board - Board finding amendment to *Labour Relations Act* and regulation made thereunder creating Ontario Construction Secretariat constitutionally within authority of province - Application for judicial review dismissed by Divisional Court

ONTARIO CONSTRUCTION SECRETARIAT AND ONTARIO LABOUR RELATIONS BOARD; RE LIUNA AND SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND ONTARIO SHEET METAL WORKERS' & ROOFERS CONFERENCE AND THE BUILT-UP ROOFERS', DAMP AND WATERPROOFERS' SECTION OF THE SHEET METAL WORKERS' CONFERENCE(Nov./Dec.) 1016

Judicial Review - Collective Agreement - Construction Industry - Voluntary Recognition - Related Employer - Sale of a Business - Board finding that 1966 sale transaction between "old RYCO" and "new RYCO" not giving rise to "successor rights" obligations because 1957 Working Agreement entered into by "old RYCO" was "recognition agreement" and not "collective agreement" - Board declining to declare "old RYCO" and "new RYCO" related employers in circumstances where the companies ceased carrying on related or associated activities or businesses several years prior to enactment of subsection 1(4) of the Act - Sale of business and related employer applications dismissed - Unions' application for judicial review dismissed by Divisional Court

ROBERTSON-YATES CORPORATION LIMITED AND THE OLRB; RE IBEW, LOCAL 105, PAT, LOCALS 205 AND 1824, UA, LOCAL 67(Jan.) 55

Judicial Review - Construction Industry - Construction Industry Grievance - Employee - Board finding off-site fabrication shop employees to be employees in the construction industry and holding that, when engaged in fabrication of ductwork destined for ICI job site, their work is covered by ICI agreement - Application for judicial review dismissed by Divisional Court	
DURASYSTEMS BARRIERS INC., DUFFY MECHANICAL CONTRACTORS LIMITED AND; RE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 30 AND ONTARIO LABOUR RELATIONS BOARD..... (Sept./Oct.)	901
Judicial Review - Crown Employees Collective Bargaining Act - Essential Services Agreement - Natural Justice - Board designating 26 Meat Inspectors as essential but only in order to monitor that no illegal slaughter of animals taking place - Board's order effectively shutting down slaughtering operations at provincially licensed premises - Various meat packers and processors seeking expedited judicial review before single judge on basis of urgency under section 6(2) of Judicial Review Procedure Act (JRPA) - Meat packers alleging that Board's decision patently unreasonable and that failure of Board to give notice to meat packers of Board's proceeding constituting denial of natural justice - Court granting leave to hear application under section 6(2) of JRPA, but dismissing application	
WESTON ABATTOIR LTD., BARRON POULTRY LIMITED, MORRISON MEAT PACKERS LIMITED, BELWOOD POULTRY LTD. AND THE ONTARIO INDEPENDENT MEAT PACKERS AND PROCESSORS SOCIETY; RE OPSEU, THE CROWN IN RIGHT OF ONTARIO REPRESENTED BY MANAGEMENT BOARD OF CABINET - ADMINISTRATIVE UNIT AND THE OLRB..... (Feb.)	181
Judicial Review - Discharge - Evidence - Health and Safety - Practice and Procedure - Applicant alleging violation of Occupational Health and Safety Act on basis of discharge described as reprisal for complaint of sexual harassment in workplace - Board declining to dismiss application without a hearing for want of <i>prima facie</i> case - Employer's application for judicial review dismissed as premature by Divisional Court	
LYNDHURST HOSPITAL; RE PAULINE AU AND THE ONTARIO LABOUR RELATIONS BOARD..... (Sept./Oct.)	902
Jurisdictional Dispute - AAHP:O and ONA disputing assignment of work performed in "Genetic Counselor" classification at district health unit - Provisions of relevant collective agreements and past practice of exclusive assignment of work to nurses combining to outweigh other factors - Board accordingly ordering that employer cease assigning disputed work to persons covered by AAHP:O collective agreement, and that it restore assignment to persons covered by ONA collective agreement	
SUDBURY & DISTRICT HEALTH UNIT, ONA AND; RE ASSOCIATION OF ALLIED HEALTH PROFESSIONALS: ONTARIO..... (Jan.)	28
Jurisdictional Dispute - Construction Industry - Evidence - Practice and Procedure - Carpenters' union and Labourers' union disputing assignment of certain work in connection with placement and rough assembly of column forms on parking garage construction project - Board declining to hear oral evidence on issue of employer practice desired to be called by Carpenters' union - Board confirming employer's composite crew assignment	
RAPID FORMING INC., CARPENTERS AND ALLIED WORKERS LOCAL 27, CJA AND; RE LIUNA, LOCAL 506..... (Jan.)	26
Jurisdictional Dispute - Construction Industry - Evidence - Practice and Procedure - Labourers' union and Carpenters' union disputing assignment of work in connection with stripping of formwork where forms are to be re-used - Board expressing view that assignment should have been made to composite crew and seeking further submissions from the parties regarding the appropriate composition of the crew - Board also taking opportunity to comment on materials filed and noting that correspondence from employers respecting their practice should, to the greatest	

extent possible, be the work product of the employer and not the party submitting the material to the Board - Board finding "standard form, fill-in-the-blank" letters to be of little utility - Board also declining to place any weight on "general" declarations prepared by members and filed by union where accuracy of declarations difficult to judge

T.A. ANDRE & SONS (ONTARIO LTD., CJA, LOCAL 249 AND; RE LIUNA, LOCAL 247 (July/Aug.)

690

Jurisdictional Dispute - Construction Industry - Practice and Procedure - Ironworkers' union and Boilermakers' union disputing assignment of certain work - Boilermakers asking Board to refuse to entertain Ironworkers' application on basis that matter had already been decided under Plan for Settlement of Jurisdictional Disputes - Board considering effect of Bill 7 amendments to jurisdictional dispute provisions of the Act - Board exercising its discretion against inquiring further and dismissing Ironworkers' application

ASEA BROWN BOVERI INC., BBF, LOCALS 128 AND 555; RE: BSOIW, LOCAL 759 (Mar./Apr.)

185

Jurisdictional Dispute - OPSEU complaining that hospital employer had improperly reassigned work related to performance of various respiratory and cardiac tests, treatments and associated tasks to employees represented by ONA and SEIU - Board not persuaded to overturn assignment in light of fact that Hospital's assignment was made for bona fide reasons and in absence of any contractual provision preventing Hospital from making the reassignment - Application by OPSEU dismissed

TRENTON MEMORIAL HOSPITAL; RE OPSEU; RE ONA, SEU, LOCAL 183 .(Sept./Oct.)

897

Jurisdictional Dispute - Remedies - Employer and unions disputing assignment of certain instrumentation work - Employer asserting that demarcation line in collective agreements requiring it to assign pneumatic instrumentation to Machinists' union and electronic instrumentation to IBEW no longer rational given technological and equipment changes occurring within last decade - Employer submitting that splitting instrumentation work between two groups of employees leading to considerable inefficiencies - Board rejecting unions' argument that Board without jurisdiction where unions not making competing claims for disputed work - Board confirming employer's assignment of pneumatic instrumentation to IBEW - At employer's request, Board directing that unions share jurisdiction over pneumatic instrumentation on interim basis

BOISE CASCADE CANADA LTD.; RE IAM, LOCAL 771 AND IBEW, LOCAL UNION 1744 (May/June)

343

Lock-Out - Evidence - Practice and Procedure - Board declining to permit union to "split its case" by leading certain reply evidence - Proposed reply evidence also improper as counsel had failed to satisfy requirements in rule in *Browne v. Dunn* - Union alleging unlawful lock-out in context of plant closure in Peterborough and opening of new facility in Cobourg - Decision to close down Peterborough facility irrevocable - Employer offering to voluntarily recognize union at Cobourg plant, but only on terms and conditions that were preferable (from its perspective) to those contained in Peterborough collective agreement - Evidence not establishing that employer's intention to send message to employees destined for Cobourg about benefit of union representation - Unlawful lock-out application dismissed

COCA-COLA BOTTLING LTD.; RE UFCW, SOFT DRINK WORKERS JOINT LOCAL EXECUTIVE COUNCIL (July/Aug.)

541

Membership Evidence - Certification - Contempt - Employer Support - Evidence - Practice and Procedure - Board rejecting various motions, objections, allegations, requests and submissions made by employer and objecting employees, including objection to composition of the panel, submission that Board without jurisdiction to schedule certification application to be heard on consecutive day basis, allegations of abuse of process and of discrimination made against union, request that Board refuse to entertain application pursuant to section 105(2)(i) of the

Act, objection to propriety of Form A-4 and to membership evidence filed by the union, and allegation of employer support for application contrary to section 13 of the Act - Certificate issuing - Board also critical of conduct of objecting employees' counsel and employer's counsel - Counsels' conduct throughout proceeding described as rude, interruptive, and intentionally disrespectful to tribunal - Counsel directed to attend before the Board to show cause why Board ought not to state case of contempt to Divisional Court or report counsels' conduct to Law Society of Upper Canada

ROBERT M. HEENAN SALES LTD., AND ROBERT M. HEENAN, VIC MURAI HOLDINGS LTD. VIC MURAI; RE UFCW, LOCAL 175.....(Feb.)

106

Membership Evidence - Certification - Reconsideration - Board applying decision in Famous Players case and allowing employers' reconsideration request respecting seven certification decisions issued prior to October 4, 1995 on ground that membership evidence filed by the union was defective - Board revoking certificates - Board finding membership evidence filed in two other certification applications satisfactory and dismissing reconsideration request with respect to those applications

CINEPLEX ODEON CORPORATION; RE IATSE.....(Nov./Dec.)

922

Natural Justice - Adjournment - Judicial Review - Reconsideration - Related Employer - Remedies - Board declaring that some 128 associates of three taxi brokers, together with each of their respective brokers, should be treated as one employer for purposes of the Act - Board making additional orders and directions in accordance with earlier agreement made between union, brokers and group of 47 associates setting up bargaining infrastructure and giving associates formal role in negotiating process - Divisional Court dismissing application for judicial review alleging that decision patently unreasonable and that applicants were denied natural justice

PETER'S TAXI LIMITED, SANDRA MANDRONIS, MATINA MANDRONIS, NORTHLAND TAXI AND SAHIB SINGH GHAI, CARL ROTMAN, NOAH ROTMAN, 896896 ONTARIO LTD. O/A LAKESHORE GARAGE, CHRIS CHRONOPOULOS.; RE THE ONTARIO LABOUR RELATIONS BOARD AND RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCAL 1688.....(Sept./Oct.)

902

Natural Justice - Certification - Construction Industry - Employee - Reconsideration - Representation Vote - Settlement - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing

B & B ELECTRIC CO. DIVISION OF ELECTROBAUER SYSTEMS LIMITED AND/OR ELECTROBAUER LIMITED; RE IBEW, LOCAL 353.....(Nov./Dec.)

907

Natural Justice - Certification - Employer Support - Evidence - Intimidation and Coercion - Judicial Review - Practice and Procedure - Employer's allegations of unlawful employer support for certification application and unlawful intimidation of employees dismissed by Board for disclosing no *prima facie* case - Employer applying for judicial review on several grounds

including alleged denial of natural justice - Application for judicial review dismissed by Divisional Court

J.P. MURPHY INC.; RE ONTARIO (ONTARIO LABOUR RELATIONS BOARD) AND USWA.....(Jan.)

54

Natural Justice - Contempt - Practice and Procedure - Unfair Labour Practice - Union asking Board to state case for contempt against Chair of Management Board as result of press accounts of certain comments attributed to him regarding Labour Relations Board - Union also alleging that Board lacking requisite structural independence and reasonably perceived to be partial as result of government's recent removal of vice-chairs prior to expiry of terms of appointment, government's role in selection of the vice-chairs removed, recent re-appointment "at pleasure" of two vice-chairs, certain comments attributed to Chair of Management Board, and allegations regarding control of Chair of Management Board over Ministry of Labour's list of approved arbitrators - Vice-Chair presiding at hearing disclosing that he and all other vice-chairs possess information concerning process of selection of vice-chairs for removal, but declining to reveal content of that information - Board accepting respondents' submission that disclosure raising reasonable apprehension of bias - Board staying proceedings

ONTARIO REALTY CORPORATION (ORC), DAVID JOHNSON, FRANK RAPOSO AND SIGNATURE BUILDING MAINTENANCE SYSTEMS; SEIU, LOCAL 204.....(Nov./Dec.)

998

Natural Justice - Crown Employees Collective Bargaining Act - Essential Services Agreement - Judicial Review - Board designating 26 Meat Inspectors as essential but only in order to monitor that no illegal slaughter of animals taking place - Board's order effectively shutting down slaughtering operations at provincially licensed premises - Various meat packers and processors seeking expedited judicial review before single judge on basis of urgency under section 6(2) of Judicial Review Procedure Act (JRPA) - Meat packers alleging that Board's decision patently unreasonable and that failure of Board to give notice to meat packers of Board's proceeding constituting denial of natural justice - Court granting leave to hear application under section 6(2) of JRPA, but dismissing application

WESTON ABATTOIR LTD., BARRON POULTRY LIMITED, MORRISON MEAT PACKERS LIMITED, BELWOOD POULTRY LTD. AND THE ONTARIO INDEPENDENT MEAT PACKERS AND PROCESSORS SOCIETY; RE OPSEU, THE CROWN IN RIGHT OF ONTARIO REPRESENTED BY MANAGEMENT BOARD OF CABINET - ADMINISTRATIVE UNIT AND THE OLRB.....(Feb.)

181

Parties - Alteration of Jurisdiction - Construction Industry - Practice and Procedure - Unfair Labour Practice - IBEW Local ("Local 1788") alleging that IBEW (the "International") altering its jurisdiction without just cause contrary to Bill 80 amendments to the Act - Board granting standing to IBEW Electrical Power Systems Construction Council of Ontario, various locals of IBEW, EPSCA, and Ontario Hydro and denying standing to IBEW Construction Council of Ontario and to Electrical Contractors Association of Ontario - Board directing applicant Local 1788 to call its evidence first - On the merits, Board determining that International had altered Local 1788's jurisdiction as alleged, but that it had just cause to do so - Board satisfied that alteration of jurisdiction likely to facilitate viable and stable collective bargaining without causing serious labour relations problems - Application dismissed

IBEW; RE IBEW LOCAL 1788; RE THE IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO AND IBEW, LOCAL UNIONS 105, 115, 120, 303, 402, 530, 586, 773, 804, 894, 1687 AND 1739; EPSCA AND ONTARIO HYDRO; IBEW, LOCAL 353.....(Feb.)

70

Parties - Construction Industry - Construction Industry Grievance - Practice and Procedure - Union's grievance raising issue of whether work involved construction work or maintenance work - Union alleging that work covered by ICI agreement and employer asserting that work properly dealt with under terms of General Presidents' Maintenance Committee for Canada Project

Agreement - General Presidents' Maintenance Committee for Canada ("GPC") and project owner each seeking to intervene in proceeding - Board concluding that neither project owner nor GPC entitled to standing as of right, but granting standing to GPC as matter of discretion - Project owner denied standing

JADDCO ANDERSON LIMITED; RE IBEW, LOCAL 105 (Mar./Apr.) 249

Picketing - Charter of Rights and Freedoms - Constitutional Law - Strike - Remedies - Toronto Transit Commission ("TTC") alleging that certain protest leaders and labour organizations violating section 83 of the Act by making certain statements and encouraging picketing at TTC sites in effort to ensure that TTC unable to operate during "Days of Protest" against Provincial Government - Respondents arguing that "talking" and "speaking", as opposed to "acts", not falling within ambit of section 83 - Respondents also arguing that section 83 should be read subject to respondents' Charter rights and that there was no causal connection established between protest leaders statements and unlawful strike that might result - Board dismissing application against labour organizations on grounds that only "persons" may breach section 83 of the Act - Board finding and declaring that two of three named individual respondents violated section 83 of the Act - Individual respondents directed to cease and desist from encouraging persons to picket TTC premises as restricted by the Board - Board prohibiting picketing in and around access points identified by TTC if it will interfere with employees' access to work - Picketing at subway stations also restricted during certain specified hours - Individual respondents directed to advise participants in "Days of Protest" of declarations and directions made by the Board

TORONTO TRANSIT COMMISSION; RE GORD WILSON, SID RYAN, LINDA TORNEY, OFL, CUPE, AND LABOUR COUNCIL OF METROPOLITAN TORONTO; RE MS. MEENU SIKAND-TAYLOR (Sept./Oct.) 889

Picketing - Construction Industry - Strike - Threat to picket employer's worksite constituting threat to call or authorize unlawful strike for purposes of the Act - Ally doctrine not applying to facts before the Board - Declaration and cease and desist order issuing

BLYTHYONGE DEVELOPMENTS INC.; RE LIUNA, LOCAL 183 (May/June) 336

Practice and Procedure - Adjournment - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Remedies - Unfair Labour Practice - Board not satisfied that medical evidence justifying employer's inability to attend at Board hearing - Adjournment request denied - Board finding employer's threats to close business and subsequent layoff of employees in violation of the Act - Union certified under section 11(1) of the Act

BALKAN GLASS & ALUMINUM INC.; RE PAT, LOCAL UNION 1819 (GLAZIERS) (Sept./Oct.) 717

Practice and Procedure - Alteration of Jurisdiction - Construction Industry - Parties - Unfair Labour Practice - IBEW Local ("Local 1788") alleging that IBEW (the "International") altering its jurisdiction without just cause contrary to Bill 80 amendments to the Act - Board granting standing to IBEW Electrical Power Systems Construction Council of Ontario, various locals of IBEW, EPSCA, and Ontario Hydro and denying standing to IBEW Construction Council of Ontario and to Electrical Contractors Association of Ontario - Board directing applicant Local 1788 to call its evidence first - On the merits, Board determining that International had altered Local 1788's jurisdiction as alleged, but that it had just cause to do so - Board satisfied that alteration of jurisdiction likely to facilitate viable and stable collective bargaining without causing serious labour relations problems - Application dismissed

IBEW; RE IBEW LOCAL 1788; RE THE IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO AND IBEW, LOCAL UNIONS 105, 115, 120, 303, 402, 530, 586, 773, 804, 894, 1687 AND 1739; EPSCA AND ONTARIO HYDRO; IBEW, LOCAL 353 (Feb.) 70

Practice and Procedure - Bargaining Rights - Certification - Construction Industry - Sale of a Business - Related Employer - Responding employer asking Board to bar union's sale of a business and related employer applications filed while certification application pending in connection with same employer - Employer's request dismissed

MAGNUM GLASS INC., MAGNUM ASSOCIATES LTD., MAGNUM GLASS INSTALLATIONS LTD., HARDIE GLASS & ALUMINUM INC.; RE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES AND THE ONTARIO COUNCIL OF INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES(Feb.)

95

Practice and Procedure - Bargaining Unit - Certification - Board explaining new procedure for resolution of "status" disputes in connection with certification applications - Union and employer agreeing to bargaining unit descriptions excluding office and clerical staff - Parties disputing whether "receptionists" falling within exclusion - In view of parties' agreement on bargaining unit description, Board declining to consider whether including receptionists in bargaining units would create serious labour relations problems - Board also observing that parties should question some long standing assumptions and exclusions traditionally agreed to automatically regarding bargaining units - Board finding receptionists included in office and clerical exclusion and therefore excluded from bargaining units - Certificates issuing

MCGILL CLUB, THE; RE SEIU, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L. C.I.O., C.L.C.(Sept./Oct.)

877

Practice and Procedure - Bargaining Unit - Certification - Subsequent to representation vote in certification application objecting, employees writing to Board to assert that they should not be included in the bargaining unit - Objecting employees raising community of interests concerns - Board concluding that objecting employees raising no allegations which, even if proved true, would change result of application - Accordingly, Board issuing final decision without a hearing - Certificate issuing

BASF CANADA INC.; RE COMMUNICATIONS, ENERGY & PAPERWORKERS UNION OF CANADA (CEP).....(May/June)

335

Practice and Procedure - Certification - Change in Working Conditions Evidence - Construction Industry - Evidence - Intimidation and Coercion - Representation Vote - Unfair Labour Practice - Witness - After conducting inquiry into witness's alleged prior inconsistent statement, Board declining to declare witness hostile or adverse - Board concluding that union used charges and threat of charges under its constitution to intimidate employees into supporting certification application - Certification application dismissed under section 11(2) of the Act - Board finding that employer violated statutory freeze when it changed wage rate it had agreed to pay to two employees - Compensation ordered

CENTRO MECHANICAL INC.; RE UA, AND ITS LOCAL 221(Sept./Oct.)

762

Practice and Procedure - Certification - Contempt - Board, in earlier decision, critical of conduct of objecting employees' counsel and employer's counsel - Counsel, in earlier decision, directed to attend before Board to show cause why Board ought not to state case of contempt to Divisional Court or report counsels' conduct to Law Society of Upper Canada - Counsel submitting letter of apology prior to show cause hearing - Board accepting counsels' apologies but not explanations or justifications offered for their conduct - Board concluding that show cause hearing unnecessary - Proceeding terminated

ROBERT M. HEENAN SALES LTD.; RE UFCW; RE GROUP OF EMPLOYEES(Feb.)

153

Practice and Procedure - Certification - Contempt - Employer Support - Evidence - Membership Evidence - Board rejecting various motions, objections, allegations, requests and submissions made by employer and objecting employees, including objection to composition of the panel, submission that Board without jurisdiction to schedule certification application to be heard on consecutive day basis, allegations of abuse of process and of discrimination made against

union, request that Board refuse to entertain application pursuant to section 105(2)(i) of the Act, objection to propriety of Form A-4 and to membership evidence filed by the union, and allegation of employer support for application contrary to section 13 of the Act - Certificate issuing - Board also critical of conduct of objecting employees' counsel and employer's counsel - Counsels' conduct throughout proceeding described as rude, interruptive, and intentionally disrespectful to tribunal - Counsel directed to attend before the Board to show cause why Board ought not to state case of contempt to Divisional Court or report counsels' conduct to Law Society of Upper Canada

ROBERT M. HEENAN SALES LTD., AND ROBERT M. HEENAN, VIC MURAI HOLDINGS LTD. VIC MURAI; RE UFCW, LOCAL 175.....(Feb.)

106

Practice and Procedure - Certification - Employer Support - Evidence - Intimidation and Coercion - Judicial Review - Natural Justice - Employer's allegations of unlawful employer support for certification application and unlawful intimidation of employees dismissed by Board for disclosing no *prima facie* case - Employer applying for judicial review on several grounds including alleged denial of natural justice - Application for judicial review dismissed by Divisional Court

J.P. MURPHY INC.; RE ONTARIO (ONTARIO LABOUR RELATIONS BOARD) AND USWA.....(Jan.)

54

Practice and Procedure - Certification - Evidence - Union winning representation vote but employer asserting that certificate should not issue - Employer submitting that Board mistakenly determined that there was appearance of more than 40% union support and that vote should not have been directed - Board rejecting employer's argument and affirming its practice under Bill 7 of looking only at information provided by union with its application when determining existence of appearance of 40% support - Board also explaining its inclination, where possible, to count ballots so that "quick votes" under Bill 7 are followed by quick results - Certificate issuing

CORPORATION OF CITY OF TORONTO ("THE EMPLOYER"); RE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79 ("THE UNION" OR "CUPE")..... (July/Aug.)

552

Practice and Procedure - Certification - Reconsideration - Union withdrawing first certification application after receiving response from employer listing seven office staff on list of employees and after employer opposing union's request to amend its application by excluding office and clerical staff from proposed bargaining unit - Board granting union leave to withdraw without a bar - Union filing second application and proposing bargaining unit excluding office and clerical staff - Employer objecting - Board directing representation vote - Employer applying for reconsideration of decision permitting union to withdraw first application without a bar - Board rejecting employer's submission that Bill 7 amendments to Act imposing mandatory, rather than discretionary, bar following withdrawn applications - Board noting that inconvenience of employer in responding to certification application that is subsequently withdrawn not amounting to prejudice and not justifying imposition of bar - Board also recognizing that subsequent certification application may be based on information union had gained from first withdrawn application, but seeing nothing improper in this - In circumstances where wishes of employees not tested with certainty and union is not abusing Board's process, Board identifying no need to impose bar - Reconsideration application dismissed - Certificate

SARA LEE BAKERY CANADA; RE USWA..... (May/June)

480

Practice and Procedure - Certification - Representation Vote - International union's previous certification application dismissed and one year bar imposed - Local of international union applying for certification six months later - Employer submitting that local union's application covered by the bar and that application should be dismissed - Employer asking that ballot box be sealed pending determination of the issue - Board declining to direct that ballot box be sealed - Board

noting practical advantage of counting ballots in determining whether necessary to decide bar issue raised by employer

K-MART CANADA LIMITED; RE UFCW(Nov./Dec.) 950

Practice and Procedure - Certification - Representation Vote - Security Guard - Employer objecting to union certification application under section 14(2) of the Act on basis that union admits to membership persons who are not guards - Employer requesting that ballot box be sealed - Board determining not to seal ballot box, but that employer's objection under section 14(2) of the Act should be considered by Board at hearing scheduled for application

B. A. BANKNOTE, A DIVISION OF QUEBECOR PRINTING INC.; RE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS.....(Nov./Dec.) 906

Practice and Procedure - Certification - Representation Vote - Security Guards - Timeliness - USWA and CSU each filing application to displace UPGW as bargaining agent for security guard employees of employer - Board concluding that USWA's first application filed day before commencement of last two months of UPGW collective agreement's operation and, therefore, untimely - USWA filing subsequent application on same day as CSU - Board distinguishing *Carleton Board of Education* case and exercising its discretion under section 111(3) of the Act to process the two applications together - Board finding that USWA and CSU each appearing to enjoy membership support of at least 40% in their proposed bargaining units - Board directing three-way representation vote - Board rejecting request to postpone vote until hearing into various "40% threshold" assertions or allegations concerning conflicts of interest resulting from applicant unions becoming certified - Board explaining its practice concerning how, when and on what information it determines that a representation vote should be ordered in certification applications

BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE USWA; RE UFCW, LOCAL 333 (CANADIAN SECURITY UNION) AND INTERNATIONAL UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1956.....(Mar./Apr.) 192

Practice and Procedure - Colleges Collective Bargaining Act - Discharge - Duty of Fair Representation - Health and Safety - Unfair Labour Practice - Applicant complaining about union's handling of various grievances and about conduct of College alleged to have caused stress and to constitute workplace hazard- Board exercising its discretion not to inquire into complaint under Colleges Collective Bargaining Act because of delay and because no labour relations purpose would be served by the inquiry - Application under Occupational Health and Safety Act (OHSA), except for issue of separation from employment, dismissed for delay - Application under OHSA dealing with termination stayed by Board pending outcome of complaints filed by applicant with Human Rights Commission

GAZIT, DAVID; RE OPSEU; RE GEORGE BROWN COLLEGE (July/Aug.) 635

Practice and Procedure - Construction Industry - Construction Industry Grievance - Employer objecting to Board's consideration of grievance under ICI provincial agreement because subject matter had earlier been referred to and decided by panel of General Presidents' Maintenance Committee under terms of General Presidents' Maintenance Committee Project Agreements - Employer's objection upheld - Board terminating proceeding before it

DELTA CATALYTIC INDUSTRIAL SERVICES LIMITED; IBEW, LOCAL 353;
RE GENERAL PRESIDENT'S MAINTENANCE COMMITTEE FOR CANADA,
PETRO-CANADA(Mar./Apr.) 233

Practice and Procedure - Construction Industry - Construction Industry Grievance - Parties - Union's grievance raising issue of whether work involved construction work or maintenance work - Union alleging that work covered by ICI agreement and employer asserting that work properly dealt with under terms of General Presidents' Maintenance Committee for Canada Project Agreement - General Presidents' Maintenance Committee for Canada ("GPC") and project

owner each seeking to intervene in proceeding - Board concluding that neither project owner nor GPC entitled to standing as of right, but granting standing to GPC as matter of discretion - Project owner denied standing

JADDCO ANDERSON LIMITED; RE IBEW, LOCAL 105.....(Mar./Apr.) 249

Practice and Procedure - Construction Industry - Evidence - Jurisdictional Dispute - Carpenters' union and Labourers' union disputing assignment of certain work in connection with placement and rough assembly of column forms on parking garage construction project - Board declining to hear oral evidence on issue of employer practice desired to be called by Carpenters' union - Board confirming employer's composite crew assignment

RAPID FORMING INC., CARPENTERS AND ALLIED WORKERS LOCAL 27, CJA AND; RE LIUNA, LOCAL 506(Jan.) 26

Practice and Procedure - Construction Industry - Evidence - Jurisdictional Dispute - Labourers' union and Carpenters' union disputing assignment of work in connection with stripping of formwork where forms are to be re-used - Board expressing view that assignment should have been made to composite crew and seeking further submissions from the parties regarding the appropriate composition of the crew - Board also taking opportunity to comment on materials filed and noting that correspondence from employers respecting their practice should, to the greatest extent possible, be the work product of the employer and not the party submitting the material to the Board - Board finding "standard form, fill-in-the-blank" letters to be of little utility - Board also declining to place any weight on "general" declarations prepared by members and filed by union where accuracy of declarations difficult to judge

T.A. ANDRE & SONS (ONTARIO LTD., CJA, LOCAL 249 AND; RE LIUNA, LOCAL 247 (July/Aug.) 690

Practice and Procedure - Construction Industry - Evidence - Termination - Trade Union - Trade Union Status - Applicants seeking to terminate CUSAW's bargaining rights in connection with several roofing contractors working in residential sector of construction industry - After close of CUSAW's case, applicant moving to "nonsuit" CUSAW on ground that its own evidence failed to establish that it was a trade union within the meaning of the Act - Board explaining use of nonsuit motions and those akin to nonsuit motions in proceedings before it, and why Board considered applicant's motion without putting it to its election - Board concluding that CUSAW not an organization of employees, but rather an organization formed by, and operated for the benefit of, employers (that is, crew leaders) - Application to terminate bargaining rights allowed

CANADIAN UNION OF SHINGLERS & ALLIED WORKERS; RE JOE WHITE, HANK BROUWERS, PAUL CYR; RE RESIDENTIAL ROOFING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO ET AL.....(Mar./Apr.) 215

Practice and Procedure - Construction Industry - Jurisdictional Dispute - Ironworkers' union and Boilermakers' union disputing assignment of certain work - Boilermakers asking Board to refuse to entertain Ironworkers' application on basis that matter had already been decided under Plan for Settlement of Jurisdictional Disputes - Board considering effect of Bill 7 amendments to jurisdictional dispute provisions of the Act - Board exercising its discretion against inquiring further and dismissing Ironworkers' application

ASEA BROWN BOVERI INC., BBF, LOCALS 128 AND 555; RE: BSOIW, LOCAL 759(Mar./Apr.) 185

Practice and Procedure - Contempt - Natural Justice - Unfair Labour Practice - Union asking Board to state case for contempt against Chair of Management Board as result of press accounts of certain comments attributed to him regarding Labour Relations Board - Union also alleging that Board lacking requisite structural independence and reasonably perceived to be partial as result of government's recent removal of vice-chairs prior to expiry of terms of appointment, government's role in selection of the vice-chairs removed, recent re-appointment "at pleasure"

of two vice-chairs, certain comments attributed to Chair of Management Board, and allegations regarding control of Chair of Management Board over Ministry of Labour's list of approved arbitrators - Vice-Chair presiding at hearing disclosing that he and all other vice-chairs possess information concerning process of selection of vice-chairs for removal, but declining to reveal content of that information - Board accepting respondents' submission that disclosure raising reasonable apprehension of bias - Board staying proceedings

ONTARIO REALTY CORPORATION (ORC), DAVID JOHNSON, FRANK RAPOSO AND SIGNATURE BUILDING MAINTENANCE SYSTEMS; SEIU, LOCAL 204.....(Nov./Dec.)

998

Practice and Procedure - Discharge - Evidence - Health and Safety - Applicant alleging violation of Occupational Health and Safety Act on basis of discharge described as reprisal for complaint of sexual harassment in workplace - Board earlier issuing bottom line decision declining to dismiss application without a hearing for want of *prima facie* case - Board concluding that it is not plain and obvious that complaint has no chance of success - Board finding that there is arguable case that sexual harassment is hazard covered by Occupational Health and Safety Act and that complaint may be successful even if it is not

LYNDHURST HOSPITAL; RE PAULINE AU.....(May/June)

456

Practice and Procedure - Discharge - Evidence - Health and Safety - Judicial Review - Applicant alleging violation of Occupational Health and Safety Act on basis of discharge described as reprisal for complaint of sexual harassment in workplace - Board declining to dismiss application without a hearing for want of *prima facie* case - Employer's application for judicial review dismissed as premature by Divisional Court

LYNDHURST HOSPITAL; RE PAULINE AU AND THE ONTARIO LABOUR RELATIONS BOARD.....(Sept./Oct.)

902

Practice and Procedure - Duty of Fair Representation - Unfair Labour Practice - Applicant claiming that faculty union violated duty of fair representation when it refused to take his grievance to arbitration - Union's non-suit motion allowed - Application dismissed

WINTER, JAMES DR.; RE THE FACULTY ASSOCIATION OF THE UNIVERSITY OF WINDSOR; RE THE UNIVERSITY OF WINDSOR.....(Feb.)

154

Practice and Procedure - Duty to Bargaining in Good Faith - Unfair Labour Practice - Board exercising its discretion not to inquire into union's unfair labour practice complaint where existence of arguable case far from clear and where litigating the matter would do nothing to further the parties' collective bargaining or their labour relations in general

ORENDA AEROSPACE CORPORATION; RE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL LODGE 1922.....(May/June)

478

Practice and Procedure - Evidence - Health and Safety - Applicant employee alleging unlawful reprisal in violation of Occupational Health and Safety Act and seeking to rely on physicians' medical reports - Responding employer objecting to medical reports being received in absence of *viva voce* testimony from physicians involved - Responding employer summoning certain medical records of applicant from physicians - Applicant opposing their introduction - Board ruling that onus of calling physicians resting with applicant

IMMIGRANT WOMEN'S HEALTH CENTRE; RE RUTH KIDANE.....(May/June)

454

Practice and Procedure - Evidence - Lock-Out - Board declining to permit union to "split its case" by leading certain reply evidence - Proposed reply evidence also improper as counsel had failed to satisfy requirements in rule in *Browne v. Dunn* - Union alleging unlawful lock-out in context of plant closure in Peterborough and opening of new facility in Cobourg - Decision to close down Peterborough facility irrevocable - Employer offering to voluntarily recognize union at Cobourg plant, but only on terms and conditions that were preferable (from its perspective) to

those contained in Peterborough collective agreement - Evidence not establishing that employer's intention to send message to employees destined for Cobourg about benefit of union representation - Unlawful lock-out application dismissed

COCA-COLA BOTTLING LTD.; RE UFCW, SOFT DRINK WORKERS JOINT LOCAL EXECUTIVE COUNCIL..... (July/Aug.) 541

Practice and Procedure - Evidence - Security Guard - Employer seeking to terminate union's bargaining rights for bargaining unit of guards under transitional provisions of Bill 7 - Employer asserting that as result of 1994 Board decision in connection with application to combine bargaining units and that decision's conflict of interest finding, doctrine of issue estoppel applying such that Board should terminate union's bargaining rights without need for further hearing - Board concluding that issues in earlier decision and in current proceeding under Bill 7 not the same and that matter ought not to be resolved without affording the union an opportunity for a hearing

MUNICIPALITY OF METROPOLITAN TORONTO, THE; RE CUPE, LOCAL 79 (July/Aug.) 644

Practice and Procedure - First Contract Arbitration - Termination - Application to terminate union's bargaining rights brought after four days of hearing in union's first contract application - Termination applicants asking Board to allow termination application to proceed ahead of first contract application and asking Board to direct representation vote - Board deciding to proceed with first contract application

FORT WILLIAM CLINIC; RE SHARON COSLETT AND MARNIE MACMILLAN; RE SEU, LOCAL 268 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. AND C.L.C. (Nov./Dec.) 942

Practice and Procedure - First Contract Arbitration - Termination - Union's first contract application pending before Board - Employees subsequently filing termination application - Union's response to termination application including allegations of employer initiation or interference in connection with application - Union seeking dismissal of application under section 63(16) of the Act - Board determining that representation vote ought not to be held at this stage and that first contract application and termination application be listed together for hearing

EAST SIDE MARIO'S, BIRSSA HOLDINGS INC. C.O.B. AS; RE LYNDA ANN FALVO; RE UFCW, LOCAL 175/633 (Sept./Oct.) 810

Practice and Procedure - Termination - Timeliness - Board declining to "waive" rules of procedure providing that termination application considered filed on date that it is received by Board - Board finding termination application untimely in view of appointment of conciliation officer - Application dismissed

ONTARIO PUBLIC SERVICE EMPLOYEES UNION; RE TRACY MCLELLAN, JENNIFER FAULKNER, SHARON HAVILAND, MARY-LOU REEVES, MAXINE RAPAI, DONNA DEMPSEY (Jan.) 23

Practice and Procedure - Termination - Timeliness - Board presented with third termination application regarding same bargaining unit since August 1995 - First application withdrawn and second application dismissed after hearing and Board's conclusion that petition not proven to be voluntary - Board relieving against strict application of Interim Certification and Termination Rules and finding third application sent by registered mail before, but received after, appointment of conciliation officer to be timely - Board, however, exercising its discretion under section 111(2)(k) of the Act to refuse to entertain third application

ONTARIO PUBLIC SERVICES EMPLOYEES UNION; PAULINE STODDART (Feb.) 98

Practice and Procedure - Union objecting to presence of court reporter at Board proceeding - Board permitting employer's counsel to make use of court reporter subject to certain conditions - Board also imposing conditions on use by employer counsel of written transcript of proceedings

J.P. MURPHY INC.; RE A GROUP OF EMPLOYEES OF J.P. MURPHY INC.; RE RETAIL WHOLESALE CANADA CANADIAN SERVICE SECTOR, DIVISION OF THE USWA, LOCAL 448 (Sept./Oct.)

843

Ratification and Strike Vote - Collective Agreement - Construction Industry - Memorandum of settlement between union and employer in construction industry made contingent on ratification - Union submitting agreement to union's accredited delegates and not to employees in the bargaining unit - Board dismissing complaint alleging that provisions of section 79 of the Act requiring employee ratification in these circumstances

IBEW, KEN WOODS, ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL UNION 1788 BY ITS TRUSTEE, IBEW AND ONTARIO HYDRO AND EPSCA AND IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO; RE POWER WORKERS' UNION - CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF IBEW, LOCAL UNION 1788 (Sept./Oct.)

821

Ratification and Strike Vote - Strike - Unfair Labour Practice - Employees alleging that strike/ratification vote organized by OPSEU for 65,000 employees of Government of Ontario employed at 4000 work sites across province not satisfying new statutory requirements - Board satisfied that voting arrangements made by OPSEU, particularly times and places scheduled for voting, affording employees ample opportunity to cast ballots and reasonably convenient in all the circumstances - Application dismissed

ONTARIO PUBLIC SERVICES EMPLOYEES UNION; RE DAVID E. SMITH ET AL (SEE SCHEDULE "B"); RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY MANAGEMENT BOARD OF CABINET (Mar./Apr.)

297

Reconsideration - Adjournment - Judicial Review - Natural Justice - Related Employer - Remedies - Board declaring that some 128 associates of three taxi brokers, together with each of their respective brokers, should be treated as one employer for purposes of the Act - Board making additional orders and directions in accordance with earlier agreement made between union, brokers and group of 47 associates setting up bargaining infrastructure and giving associates formal role in negotiating process - Divisional Court dismissing application for judicial review alleging that decision patently unreasonable and that applicants were denied natural justice

PETER'S TAXI LIMITED, SANDRA MANDRONIS, MATINA MANDRONIS, NORTHLAND TAXI AND SAHIB SINGH GHAI, CARL ROTMAN, NOAH ROTMAN, 896896 ONTARIO LTD. O/A LAKESHORE GARAGE, CHRIS CHRONOPOULOS; RE THE ONTARIO LABOUR RELATIONS BOARD AND RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCAL 1688 (Sept./Oct.)

902

Reconsideration - Certification - Certification Where Act Contravened - Interference in Trade Unions - Intimidation and Coercion - Unfair Labour Practice - Board finding that employer removal of key inside union organizer from workplace and subsequent reassignment tainted by anti-union animus - Board also finding that various steps to increase managerial presence in workplace during organizing campaign coloured by anti-union motivation - Board certifying union under section 9.2 of "old" Labour Relations Act - Employer seeking reconsideration of decision on grounds that "bottom line" decision (without reasons) issued on November 10, 1995 was not "final" decision for purposes of transitional provisions of Bill 7 - Employer submitting that Board ought to have decided case under section 11(1) of "new" Labour Relations Act - Board noting that absence of reasons not undermining dispositive effect of "bottom line" decision and

that Bill 7 requiring that “new” Act apply retroactively only where no final decision having issued on November 10, 1995 - Reconsideration application dismissed

SHOPPERS DRUG MART, ASM DISPENSARIES LIMITED C.O.B. AS; RE USWA; RE GROUP OF EMPLOYEES.....(Mar./Apr.)

303

Reconsideration - Certification - Construction Industry - Employee - Natural Justice - Representation Vote - Settlement - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is “employee” within the meaning of the Act (despite parties’ agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was “employee” - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing

B & B ELECTRIC CO. DIVISION OF ELECTROBAUER SYSTEMS LIMITED AND/OR ELECTROBAUER LIMITED; RE IBEW, LOCAL 353.....(Nov./Dec.)

907

Reconsideration - Certification - Construction Industry - Representation Vote - Board rejecting union’s request to schedule second representation vote where vote was held five days after filing of application, but on day that employees not scheduled to work and in circumstances where only one of five eligible voters cast ballot - Board not prepared to draw inference that vote not a true reflection of desires of the employees - Reconsideration application dismissed

MAVERICK MECHANICAL CONTRACTORS LIMITED; RE LOCAL UNION 47 SHEET METAL WORKERS’ INTERNATIONAL ASSOCIATION.....(Jan.)

17

Reconsideration - Certification - Membership Evidence - Board applying decision in Famous Players case and allowing employers’ reconsideration request respecting seven certification decisions issued prior to October 4, 1995 on ground that membership evidence filed by the union was defective - Board revoking certificates - Board finding membership evidence filed in two other certification applications satisfactory and dismissing reconsideration request with respect to those applications

CINEPLEX ODEON CORPORATION; RE IATSE.....(Nov./Dec.)

922

Reconsideration - Certification - Practice and Procedure - Union withdrawing first certification application after receiving response from employer listing seven office staff on list of employees and after employer opposing union’s request to amend its application by excluding office and clerical staff from proposed bargaining unit - Board granting union leave to withdraw without a bar - Union filing second application and proposing bargaining unit excluding office and clerical staff - Employer objecting - Board directing representation vote - Employer applying for reconsideration of decision permitting union to withdraw first application without a bar - Board rejecting employer’s submission that Bill 7 amendments to Act imposing mandatory, rather than discretionary, bar following withdrawn applications - Board noting that inconvenience of employer in responding to certification application that is subsequently withdrawn not amounting to prejudice and not justifying imposition of bar - Board also recognizing that subsequent certification application may be based on information union had gained from first withdrawn application, but seeing nothing improper in this - In circumstances

where wishes of employees not tested with certainty and union is not abusing Board's process, Board identifying no need to impose bar - Reconsideration application dismissed - Certificate	
SARA LEE BAKERY CANADA; RE USWA..... (May/June)	480
Reconsideration - Termination - Representation Vote - Board earlier ruling disputed ballot in representation vote to be spoiled because it did not unequivocally indicate the voter's choice - Applicant and employer seeking reconsideration on ground that Board denied them opportunity to make submissions on two unreported Board decisions cited by Board in its earlier decision - Applicant and employer also asserting that Board's decision raising significant and important issues of Board policy, particularly since passage of Bill 7 - Applications for reconsideration dismissed	
EDWARDS, A UNIT OF GENERAL SIGNAL; STEPHEN R. GERBER; RE IBEW, LOCAL 353 (July/Aug.)	632
Reference - Abandonment - Bargaining Rights - Conciliation - Construction Industry - Union certified in 1984 to represent construction labourers in ICI sector and all other sectors - Union subsequently entering into collective agreements covering labourers engaged in road and bridge building construction projects - Union in 1996 seeking to negotiate collective agreement covering labourers in other sectors - Employer asserting that it has not been active outside road and bridges construction and ICI sector - Employer objecting to appointment of conciliation officer in relation to bargaining for bargaining unit covering labourers in other sectors - Board finding no abandonment of bargaining rights and advising Minister of Labour that she has authority to make requested appointment of conciliation officer	
JOHN HAYMAN & SONS COMPANY LIMITED, THE; RE LIUNA, LOCAL 1059 (Nov./Dec.)	945
Related Employer - Adjournment - Judicial Review - Natural Justice - Reconsideration - Remedies - Board declaring that some 128 associates of three taxi brokers, together with each of their respective brokers, should be treated as one employer for purposes of the Act - Board making additional orders and directions in accordance with earlier agreement made between union, brokers and group of 47 associates setting up bargaining infrastructure and giving associates formal role in negotiating process - Divisional Court dismissing application for judicial review alleging that decision patently unreasonable and that applicants were denied natural justice	
PETER'S TAXI LIMITED, SANDRA MANDRONIS, MATINA MANDRONIS, NORTH-LAND TAXI AND SAHIB SINGH GHAI, CARL ROTMAN, NOAH ROTMAN, 896896 ONTARIO LTD. O/A LAKESHORE GARAGE, CHRIS CHRONOPOULOS.; RE THE ONTARIO LABOUR RELATIONS BOARD AND RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCAL 1688 (Sept./Oct.)	902
Related Employer - Bargaining Rights - Certification - Construction Industry - Practice and Procedure - Sale of a Business - Responding employer asking Board to bar union's sale of a business and related employer applications filed while certification application pending in connection with same employer - Employer's request dismissed	
MAGNUM GLASS INC., MAGNUM ASSOCIATES LTD., MAGNUM GLASS INSTALLATIONS LTD., HARDIE GLASS & ALUMINUM INC.; RE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES AND THE ONTARIO COUNCIL OF INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES (Feb.)	95
Related Employer - Bargaining Rights - Construction Industry - Construction Industry Grievance - Sale of a Business - Board holding that Ontario Provincial Conference (OPC) designation for tile and terrazzo workers limits OPC's representation rights to journeymen and apprentice marble, tile, terrazzo, cement masons, resilient floor layers and their helpers for whom OPC, one of the specified locals, or a subsequently chartered local has bargaining rights - Board not accepting that sub-contracting clause in provincial bricklayers' agreement requiring contractors	

bound to the agreement to sub-contract work covered by provincial marble, tile and terrazzo agreement to contractor bound by such agreement - Board accordingly determining that responding parties not bound to provincial marble, tile and terrazzo agreement, nor are they required by provincial bricklayers' agreement to subcontract tile and terrazzo work to contractor bound by provincial bricklayers' agreement or provincial, marble tile and terrazzo agreement

DINEEN CONSTRUCTION CONSTRUCTION LIMITED, MITCHELL CONSTRUCTION LIMITED, BUTTCON LIMITED, M.A. BUTT CONSTRUCTION LIMITED, M.A. BUTT CONSTRUCTION (1983) LIMITED; RE ONTARIO PROVINCIAL CONFERENCE OF BRICKLAYERS AND ALLIED CRAFTSMEN AND BAC, LOCAL 2, ONTARIO AND MARBLE TILE & TERRAZZO UNION, LOCAL 31; RE TERRAZZO, TILE & MARBLE GUILD OF ONTARIO, INC. (July/Aug.)

610

Related Employer - Board finding businesses related or associated in view of findings that they have same general character, that they serve same market, that they employ same mode and means of production, that they have common management, and that the businesses are carried on for benefit of related principals - Alleged delay by union in making application and alleged failure to show erosion of existing bargaining rights not causing Board to exercise its discretion against making related employer declaration - Single employer declaration issuing - Request for additional relief, including order to recall certain laid-off employees, deferred to grievance arbitrator

CANADA STAMPINGS & DIES LTD., STAMPTECH LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 636 (May/June)

355

Related Employer - Collective Agreement - Construction Industry - Judicial Review - Voluntary Recognition - Sale of a Business - Board finding that 1966 sale transaction between "old RYCO" and "new RYCO" not giving rise to "successor rights" obligations because 1957 Working Agreement entered into by "old RYCO" was "recognition agreement" and not "collective agreement" - Board declining to declare "old RYCO" and "new RYCO" related employers in circumstances where the companies ceased carrying on related or associated activities or businesses several years prior to enactment of subsection 1(4) of the Act - Sale of business and related employer applications dismissed - Unions' application for judicial review dismissed by Divisional Court

ROBERTSON-YATES CORPORATION LIMITED AND THE OLRB; RE IBEW, LOCAL 105, PAT, LOCALS 205 AND 1824, UA, LOCAL 67.....(Jan.)

55

Related Employer - Construction Industry - Board Companies A and B conceding that pre-conditions to granting section 1(4) relief present, but submitting that Board ought to exercise discretion against making single employer declaration - Board finding it inappropriate to grant section 1(4) relief for various reasons, including fact that Company A was incorporated before Company B, each entity performed its own type of work, there was no common pool or interchange of employees, the companies had been used in a way that had not compromised the union's bargaining rights and the union had represented at the time collective agreement was entered into that it would have no impact on Company A - Application dismissed

FERRETTI FORMING INC., FER-PAL CONSTRUCTION LTD.; RE IUOE, LOCAL 793; RE LIUNA, LOCAL 183 (Feb.)

66

Related Employer - Remedies - Responding companies found to be carrying on associated or related activities, even assuming that one of the companies engaged solely in excavation work while the others engaged in concrete forming work - Union asking for declaration to make all responding parties jointly liable for outstanding debts of one another - Board holding that section 1(4) relief appropriate to make related entities jointly liable for outstanding debts and to prevent union's bargaining rights from being eroded where work is continuing to be performed under collective agreement - Accordingly, Board declaring responding companies

in first application to be jointly liable for outstanding debts owed to union - Board, however, exercising discretion against issuing single employer declaration in second application because Board not satisfied that related company performing or likely to perform work within scope of collective agreement - Declaration for sole purpose of providing union with "deep pocket" from which to recover outstanding debt not appropriate in such circumstances - Second application dismissed

DOBBEN GROUP INC., DOBBEN CONSTRUCTION INC. AND MARCON CONTRACTORS; RE CARPENTERS AND ALLIED WORKERS LOCAL 27, CJA, LOCALS 785 AND 2050 (Feb.)

57

Related Employer - Remedies - Teamsters certified to represent drivers employed by Company "A" in January 1995 - CUOE certified to represent drivers of Company "B" in April 1995 - Company "B" employing drivers for first time in March or April - Teamsters asserting and Board finding that Companies "A" and "B" related employers - CUOE filing intervention but not otherwise participating in proceeding or defending its bargaining rights - Board declaring Companies "A" and "B" to be related employers and that CUOE no longer representing employees of Company "B"

TILBURY CONCRETE TRANSPORT INC. AND TILBURY CONCRETE INC.; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880; RE CUOE (Mar./Apr.)

321

Remedies - Adjourment - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Practice and Procedure - Unfair Labour Practice - Board not satisfied that medical evidence justifying employer's inability to attend at Board hearing - Adjourment request denied - Board finding employer's threats to close business and subsequent layoff of employees in violation of the Act - Union certified under section 11(1) of the Act

BALKAN GLASS & ALUMINUM INC.; RE PAT, LOCAL UNION 1819 (GLAZIERS) (Sept./Oct.)

717

Remedies - Adjourment - Judicial Review - Natural Justice - Reconsideration - Related Employer - Board declaring that some 128 associates of three taxi brokers, together with each of their respective brokers, should be treated as one employer for purposes of the Act - Board making additional orders and directions in accordance with earlier agreement made between union, brokers and group of 47 associates setting up bargaining infrastructure and giving associates formal role in negotiating process - Divisional Court dismissing application for judicial review alleging that decision patently unreasonable and that applicants were denied natural justice

PETER'S TAXI LIMITED, SANDRA MANDRONIS, MATINA MANDRONIS, NORTHLAND TAXI AND SAHIB SINGH GHAI, CARL ROTMAN, NOAH ROTMAN, 896896 ONTARIO LTD. O/A LAKESHORE GARAGE, CHRIS CHRONOPOULOS; RE THE ONTARIO LABOUR RELATIONS BOARD AND RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCAL 1688 (Sept./Oct.)

902

Remedies - Certification - Certification Where Act Contravened - Interference in Trade Unions - Intimidation and Coercion - Unfair Labour Practice - After receiving copy of union's certification application, employer meeting with employees one-to-one and asking them to sign personalized declaration opposing trade union - Employer acting on legal advice and in belief that he was acting in compliance with Board's rules - Only one of five employees subsequently casting ballot in representation vote - Union losing vote - Board setting aside representation vote and directing new vote - Employer directed to cease and desist violating Act, to post decision and attached notice in workplace and to mail copy to each employee at home, and to provide union opportunity to address employees at meeting held during normal working hours - Union's application to be certified under section 11(1) of the Act dismissed

MAVERICK MECHANICAL CONTRACTORS LIMITED; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION (Mar./Apr.)

289

Remedies - Charter of Rights and Freedoms - Constitutional Law - Strike - General Motors alleging that work stoppage at its London plant in connection with day of protest constituting unlawful strike and seeking declaratory relief as well as cease and desist direction - Union asserting that work stoppage was form of political expression protected by Charter and not "unlawful strike" - Board agreeing that work stoppage was form of "expression" protected by section 2(b) of the Charter, but holding that Labour Relations Act's prohibition on strikes during currency of collective agreement part of balancing embodied in the Act that is within the realm of reasonableness that Courts have accorded to legislatures when addressing labour relations problems - Board finding impugned provisions of the Act not inconsistent with Charter - Board declaring work stoppage at London's GM plant to be unlawful but declining to issue cease and desist direction in respect of future protest strikes

GENERAL MOTORS OF CANADA LIMITED, ("GM" OR "THE COMPANY"); RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA), ET AL (LISTED ON "SCHEDULE A" TO THE APPLICATION)..... (May/June)

409

Remedies - Charter of Rights and Freedoms - Constitutional Law - Strike - Picketing - Toronto Transit Commission ("TTC") alleging that certain protest leaders and labour organizations violating section 83 of the Act by making certain statements and encouraging picketing at TTC sites in effort to ensure that TTC unable to operate during "Days of Protest" against Provincial Government - Respondents arguing that "talking" and "speaking", as opposed to "acts", not falling within ambit of section 83 - Respondents also arguing that section 83 should be read subject to respondents' Charter rights and that there was no causal connection established between protest leaders statements and unlawful strike that might result - Board dismissing application against labour organizations on grounds that only "persons" may breach section 83 of the Act - Board finding and declaring that two of three named individual respondents violated section 83 of the Act - Individual respondents directed to cease and desist from encouraging persons to picket TTC premises as restricted by the Board - Board prohibiting picketing in and around access points identified by TTC if it will interfere with employees' access to work - Picketing at subway stations also restricted during certain specified hours - Individual respondents directed to advise participants in "Days of Protest" of declarations and directions made by the Board

TORONTO TRANSIT COMMISSION; RE GORD WILSON, SID RYAN, LINDA TORNEY, OFL, CUPE, AND LABOUR COUNCIL OF METROPOLITAN TORONTO; RE MS. MEENU SIKAND-TAYLOR..... (Sept./Oct.)

889

Remedies - Collective Agreement - Duty to Bargain in Good Faith - Unfair Labour Practice - Union alleging violation of duty to bargain in good faith where employer deciding not to ratify what had been negotiated between its collective bargaining representatives and those of union - Board rejecting union's argument that collective agreement had, as matter of fact, been concluded between parties - Board, however, deciding that employer's failure to develop adequate bargaining mandate falling short of obligation to make every reasonable effort to conclude collective agreement - Employer directed to develop unconditional proposal for collective agreement and return to table and bargain with union in good faith

CORPORATION LE LYCÉE CLAUDEL; RE SYNDICAT CANADIEN DE LA FONCTION PUBLIQUE ET SA SECTION LOCALE 2519..... (May/June)

370

Remedies - Construction Industry - Interference in Trade Unions - Termination - Unfair Labour Practice - Prior to directing representation vote, Board inquiring into union's allegation that employer initiated termination application within meaning of section 63(16) of the Act - Board finding involvement of employer in early stage of process leading to termination application - Board holding that termination application founded in employer's initiation should result in its dismissal absent compelling labour relations reasons why vote should still be held - Termination

application dismissed under section 63(16) of the Act - Union's unfair labour practice application alleging interference with union's representation of employees allowed - Cease and desist order issuing

BYTOWN ELECTRICAL SERVICES LTD.; RE SHAWN JOSEPH ARSENAULT; RE IBEW AND THE IBEW CONSTRUCTION COUNCIL OF ONTARIO, LOCALS 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, 894, 1687 AND 1739.....(Sept./Oct.)

721

Remedies - Construction Industry - Interim Relief - Unfair Labour Practice - Applicants alleging that International union, through trusteeship has made unlawful use of local union's assets, has improperly imposed dues increase on members and has conducted itself improperly in negotiating new collective agreements to detriment of members of local union - Applicants seeking interim order staying implementation of new collective agreements - Board concluding that it is without jurisdiction under section 98 of the Act to grant the interim order sought, but that Statutory Powers Procedure Act confers jurisdiction on Board to provide substantive interim relief, including the order sought - Board dismissing application for interim relief because of applicants' undue delay

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, KEN WOODS, ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL UNION 1788 BY ITS TRUSTEE, IBEW AND ONTARIO HYDRO AND EPSCA; RE POWER WORKERS' UNION - CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT, AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF IBEW, LOCAL UNION 1788(Sept./Oct.)

826

Remedies - Crown Employees Collective Bargaining Act - Employee - Interim Relief - Union applying to have Board determine whether certain persons should be excluded from its bargaining units as result of Bill 7 changes to Crown Employees Collective Bargaining Act - Union also asking for interim order that disputed individuals not be excluded pending Board's determination of the issue - Board considering its jurisdiction to make interim orders and concluding that Bill 7 amendments only give Board power to make interim orders dealing with conduct of proceedings and related matters - Board also concluding that Statutory Powers Procedure Act ("SPPA") granting Board general power to grant interim orders and that that power prevails over conflicting provision in Labour Relations Act - Board indicating that it will exercise its SPPA interim order jurisdiction (where discharges and reinstatement requests are not in issue) in a manner similar to the approach previously utilized by the Board prior to Bill 7 - Board denying interim order request here because harm in granting or withholding interim order evenly balanced and because of union's stated inability to commence an adjudication on the merits for some considerable period

CROWN IN RIGHT OF ONTARIO OF ONTARIO REPRESENTED BY MANAGEMENT BOARD OF CABINET, THE; RE OPSEU; RE ASSOCIATION OF MANAGEMENT, ADMINISTRATION AND PROFESSIONAL CROWN EMPLOYEES OF ONTARIO (AMAP-CEO).....(Sept./Oct.)

780

Remedies - Interim Relief - Trusteeship - International union seeking to extend trusteeship over local beyond 12 month period - Application to extend trusteeship filed 12 days before statutory expiry of trusteeship - International union asking to extend trusteeship on interim basis pending disposition of main request - Request for interim extension of trusteeship dismissed - International directed to forward notices and copies of Board's decision to all members of local

IBEW; RE IBEW, LOCAL 1788.....(Mar./Apr.)

244

Remedies - Jurisdictional Dispute - Employer and unions disputing assignment of certain instrumentation work - Employer asserting that demarcation line in collective agreements requiring it to assign pneumatic instrumentation to Machinists' union and electronic instrumentation to IBEW no longer rational given technological and equipment changes occurring within last decade -

Employer submitting that splitting instrumentation work between two groups of employees leading to considerable inefficiencies - Board rejecting unions' argument that Board without jurisdiction where unions not making competing claims for disputed work - Board confirming employer's assignment of pneumatic instrumentation to IBEW - At employer's request, Board directing that unions share jurisdiction over pneumatic instrumentation on interim basis

BOISE CASCADE CANADA LTD.; RE IAM, LOCAL 771 AND IBEW, LOCAL UNION 1744 (May/June)

343

Remedies - Related Employer - Responding companies found to be carrying on associated or related activities, even assuming that one of the companies engaged solely in excavation work while the others engaged in concrete forming work - Union asking for declaration to make all responding parties jointly liable for outstanding debts of one another - Board holding that section 1(4) relief appropriate to make related entities jointly liable for outstanding debts and to prevent union's bargaining rights from being eroded where work is continuing to be performed under collective agreement - Accordingly, Board declaring responding companies in first application to be jointly liable for outstanding debts owed to union - Board, however, exercising discretion against issuing single employer declaration in second application because Board not satisfied that related company performing or likely to perform work within scope of collective agreement - Declaration for sole purpose of providing union with "deep pocket" from which to recover outstanding debt not appropriate in such circumstances - Second application dismissed

DOBBEN GROUP INC., DOBBEN CONSTRUCTION INC. AND MARCON CONTRACTORS; RE CARPENTERS AND ALLIED WORKERS LOCAL 27, CJA, LOCALS 785 AND 2050 (Feb.)

57

Remedies - Related Employer - Teamsters certified to represent drivers employed by Company "A" in January 1995 - CUOE certified to represent drivers of Company "B" in April 1995 - Company "B" employing drivers for first time in March or April - Teamsters asserting and Board finding that Companies "A" and "B" related employers - CUOE filing intervention but not otherwise participating in proceeding or defending its bargaining rights - Board declaring Companies "A" and "B" to be related employers and that CUOE no longer representing employees of Company "B"

TILBURY CONCRETE TRANSPORT INC. AND TILBURY CONCRETE INC.; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880; RE CUOE (Mar./Apr.)

321

Remedies - Strike - Board finding that union supporting or encouraging illegal strike in relation to "Days of Protest" against provincial government - Board seeing no reason not to grant both declaratory and directory relief, particularly in view of union's ongoing intention of interfering with production

DE HAVILLAND INC. AND BOMBARDIER REGIONAL AIRCRAFT DIVISION; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL UNIONS 673 AND 112 AND THOSE PERSONS NAMED IN APPENDIX "A" (Nov./Dec.)

938

Representation Vote - Certification - Change in Working Conditions Evidence - Construction Industry - Evidence - Intimidation and Coercion - Practice and Procedure - Unfair Labour Practice - Witness - After conducting inquiry into witness's alleged prior inconsistent statement, Board declining to declare witness hostile or adverse - Board concluding that union used charges and threat of charges under its constitution to intimidate employees into supporting certification application - Certification application dismissed under section 11(2) of the Act - Board finding that employer violated statutory freeze when it changed wage rate it had agreed to pay to two employees - Compensation ordered

CENTRO MECHANICAL INC.; RE UA, AND ITS LOCAL 221 (Sept./Oct.)

762

- Representation Vote - Certification - Construction Industry - Employee - Board not accepting employer's submission that employees not employed on the certification application filing date should be entitled to cast ballots in representation vote - Board finding contested employee to be employed in bargaining unit on application date - Board directing Registrar to have ballots counted in accordance with its decision
- KEN ANDERSON ELECTRIC INC.; RE IBEW, LOCAL 402 (Sept./Oct.) 846
- Representation Vote - Certification - Construction Industry - Employee - Natural Justice - Reconsideration - Settlement - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing
- B & B ELECTRIC CO. DIVISION OF ELECTROBAUER SYSTEMS LIMITED AND/OR ELECTROBAUER LIMITED; RE IBEW, LOCAL 353 (Nov./Dec.) 907
- Representation Vote - Certification - Construction Industry - Reconsideration - Board rejecting union's request to schedule second representation vote where vote was held five days after filing of application, but on day that employees not scheduled to work and in circumstances where only one of five eligible voters cast ballot - Board not prepared to draw inference that vote not a true reflection of desires of the employees - Reconsideration application dismissed
- MAVERICK MECHANICAL CONTRACTORS LIMITED; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION (Jan.) 17
- Representation Vote - Certification - Intimidation and Coercion - Union winning representation vote but employer seeking dismissal of certification application under section 11(2) of the Act - Employer alleging that union official accosted voters outside as they approached building to cast ballots in representation vote - Employer submitting that such conduct depriving employees of ability to freely express true wishes - Board rejecting employer's submission - Certificate issuing
- CITIPARK INC.; RE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C. (May/June) 367
- Representation Vote - Certification - Practice and Procedure - International union's previous certification application dismissed and one year bar imposed - Local of international union applying for certification six months later - Employer submitting that local union's application covered by the bar and that application should be dismissed - Employer asking that ballot box be sealed pending determination of the issue - Board declining to direct that ballot box be sealed - Board noting practical advantage of counting ballots in determining whether necessary to decide bar issue raised by employer
- K-MART CANADA LIMITED; RE UFCW (Nov./Dec.) 950
- Representation Vote - Certification - Practice and Procedure - Security Guard - Employer objecting to union certification application under section 14(2) of the Act on basis that union admits to membership persons who are not guards - Employer requesting that ballot box be sealed -

Board determining not to seal ballot box, but that employer's objection under section 14(2) of the Act should be considered by Board at hearing scheduled for application

B. A. BANKNOTE, A DIVISION OF QUEBECOR PRINTING INC.; RE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS.....(Nov./Dec.)

906

Representation Vote - Certification - Practice and Procedure - Security Guards - Timeliness - USWA and CSU each filing application to displace UPGW as bargaining agent for security guard employees of employer - Board concluding that USWA's first application filed day before commencement of last two months of UPGW collective agreement's operation and, therefore, untimely - USWA filing subsequent application on same day as CSU - Board distinguishing *Carleton Board of Education* case and exercising its discretion under section 111(3) of the Act to process the two applications together - Board finding that USWA and CSU each appearing to enjoy membership support of at least 40% in their proposed bargaining units - Board directing three-way representation vote - Board rejecting request to postpone vote until hearing into various "40% threshold" assertions or allegations concerning conflicts of interest resulting from applicant unions becoming certified - Board explaining its practice concerning how, when and on what information it determines that a representation vote should be ordered in certification applications

BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE USWA; RE UFCW, LOCAL 333 (CANADIAN SECURITY UNION) AND INTERNATIONAL UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1956(Mar./Apr.)

192

Representation Vote - Certification - Trade Union - Trade Union Status - Employer asserting that employees affected by certification application already represented by employees' association, that employees' association a trade union within meaning of the Act, and that employer and employees' association parties to a collective agreement within meaning of the Act - Certification application timely even assuming that employer's assertions correct - Board directing representation vote in which employees asked to cast two ballots - First ballot to ask voters whether they wish to be represented by applicant union - Second ballot to ask voters whether they wish to be represented by applicant union or employees' association - Issue of status of employees' association to be determined at hearing following the vote

CANARM LTD.;RE USWA; RE CANARM EMPLOYEES ASSOCIATION(Sept./Oct.)

747

Representation Vote - Charges - Employer Initiation - Intimidation and Coercion - Construction Industry - Termination - In response to termination application, union seeking dismissal under subsection 63(16) of the Act and pleading material facts sufficient to establish *prima facie* case of employer initiation or employer threats and intimidation in connection with application - Board directing that representation vote be deferred until determination of allegations raised by union and listing matter for hearing

ONTARIO TRUSS AND WALL, 520601 ONTARIO LTD., O/A; RE IAN CROCKFORD ET AL; RE CJA AND ITS LOCAL 1030(Jan.)

24

Representation Vote - Intimidation and Coercion - Termination - Group of employees alleging that vocal and active union supporter uttered threats and otherwise intimidated employees in days leading up to representation vote - Union winning vote - Employees requesting new vote - Board satisfied that there were no threats or intimidation and seeing no reason why result of vote should not be considered accurate representation of employees' wishes - Application dismissed

VENEST INDUSTRIES, A DIVISION OF COSMA INTERNATIONAL INC.; RE MAURICE BEAUDOIN AND LARRY SAWATSKY; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 199 CAW(May/June)

499

- Representation Vote - Termination - Count disclosing 13 ballots in favour of union, 13 ballots against it, and a single segregated ballot - Board determining that segregated ballot cast by eligible voter - Employee who cast segregated ballot advising Board that was prepared to have ballot counted - Board not counting ballot, but directing the taking of another representation vote
BRICK WAREHOUSE CORPORATION, THE; RE TIM WILSON; RE RETAIL WHOLESALE CANADA CANADIAN SERVICE SECTOR, DIVISION OF THE USWA, LOCAL 1000(Nov./Dec.) 921
- Representation Vote - Termination - Reconsideration - Board earlier ruling disputed ballot in representation vote to be spoiled because it did not unequivocally indicate the voter's choice - Applicant and employer seeking reconsideration on ground that Board denied them opportunity to make submissions on two unreported Board decisions cited by Board in its earlier decision - Applicant and employer also asserting that Board's decision raising significant and important issues of Board policy, particularly since passage of Bill 7 - Applications for reconsideration dismissed
EDWARDS, A UNIT OF GENERAL SIGNAL; STEPHEN R. GERBER; RE IBEW, LOCAL 353 (July/Aug.) 632
- Sale of a Business - Bargaining Rights - Certification - Construction Industry - Practice and Procedure - Related Employer - Responding employer asking Board to bar union's sale of a business and related employer applications filed while certification application pending in connection with same employer - Employer's request dismissed
MAGNUM GLASS INC., MAGNUM ASSOCIATES LTD., MAGNUM GLASS INSTALLATIONS LTD., HARDIE GLASS & ALUMINUM INC.; RE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES AND THE ONTARIO COUNCIL OF INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES(Feb.) 95
- Sale of a Business - Bargaining Rights - Construction Industry - Construction Industry Grievance - Related Employer - Board holding that Ontario Provincial Conference (OPC) designation for tile and terrazzo workers limits OPC's representation rights to journeymen and apprentice marble, tile, terrazzo, cement masons, resilient floor layers and their helpers for whom OPC, one of the specified locals, or a subsequently chartered local has bargaining rights - Board not accepting that sub-contracting clause in provincial bricklayers' agreement requiring contractors bound to the agreement to sub-contract work covered by provincial marble, tile and terrazzo agreement to contractor bound by such agreement - Board accordingly determining that responding parties not bound to provincial marble, tile and terrazzo agreement, nor are they required by provincial bricklayers' agreement to subcontract tile and terrazzo work to contractor bound by provincial bricklayers' agreement or provincial, marble tile and terrazzo agreement
DINEEN CONSTRUCTION CONSTRUCTION LIMITED, MITCHELL CONSTRUCTION LIMITED, BUTTCON LIMITED, M.A. BUTT CONSTRUCTION LIMITED, M.A. BUTT CONSTRUCTION (1983) LIMITED; RE ONTARIO PROVINCIAL CONFERENCE OF BRICKLAYERS AND ALLIED CRAFTSMEN AND BAC, LOCAL 2, ONTARIO AND MARBLE TILE & TERRAZZO UNION, LOCAL 31; RE TERRAZZO, TILE & MARBLE GUILD OF ONTARIO, INC. (July/Aug.) 610
- Sale of a Business - Co-op engaged in business of supplying farm inputs and services and in merchandising grain acquiring certain other unionized operations in series of transactions - Employer making sale of a business application and asking Board to rationalize (and potentially eliminate) its collective bargaining obligations - Parties disputing whether employees intermingled - Board assuming but not finding intermingling and concluding that such intermingling not of the "thorough" nature that would lead Board to intervene - Board noting that current bargaining structures not ideal but still viable - Employer's application under section 64(6) of the Act dismissed
LA CO-OPERATIVE DE POINTE-AUX-ROCHES, 1015195 ONTARIO LIMITED AND CHARLES DESMARAIS; RE UFCW, LOCAL 278W, AND CJA, LOCAL 3054; RE UNITED CO-OPERATIVE OF ONTARIO AND UCO PETROLEUM INC.; RE GROUP OF EMPLOYEES (Mar./Apr.) 259

Sale of a Business - Collective Agreement - Construction Industry - Judicial Review - Voluntary Recognition - Related Employer - Board finding that 1966 sale transaction between "old RYCO" and "new RYCO" not giving rise to "successor rights" obligations because 1957 Working Agreement entered into by "old RYCO" was "recognition agreement" and not "collective agreement" - Board declining to declare "old RYCO" and "new RYCO" related employers in circumstances where the companies ceased carrying on related or associated activities or businesses several years prior to enactment of subsection 1(4) of the Act - Sale of business and related employer applications dismissed - Unions' application for judicial review dismissed by Divisional Court	
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Sector Determination - Construction Industry - Board determining that construction of raw sewage pumping station falling within sewer and watermain sector and not ICI sector of construction industry	
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Sector Determination - Construction Industry - Construction Industry Grievance - Employer disputing jurisdiction of Board to determine union's grievance on basis that work in question falling within sewer and watermain sector and road sector, and not I.C.I. sector of construction industry - Employer asking Board to make sector determination under section 166 of the Act - Board applying <i>London Sandblasting</i> case and ruling that employer bargaining agency having authority to negotiate clause in Provincial Agreement providing that that agreement applying in all other sectors where certain conditions met - Board concluding that it has jurisdiction to arbitrate issues raised by grievance - Board also concluding that terms of Provincial Agreement precluding need for sector determination	
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Security Guard - Certification - Practice and Procedure - Representation Vote - Employer objecting to union certification application under section 14(2) of the Act on basis that union admits to membership persons who are not guards - Employer requesting that ballot box be sealed - Board determining not to seal ballot box, but that employer's objection under section 14(2) of the Act should be considered by Board at hearing scheduled for application	
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OLD OAK PROPERTIES INC. AND EWALD BIERBAUM; RE LIUNA, LOCAL 1059 (July/Aug.)	648
Security Guard - Evidence - Practice and Procedure - Employer seeking to terminate union's bargaining rights for bargaining unit of guards under transitional provisions of Bill 7 - Employer asserting that as result of 1994 Board decision in connection with application to combine bargaining units and that decision's conflict of interest finding, doctrine of issue estoppel applying such that Board should terminate union's bargaining rights without need for further	

hearing - Board concluding that issues in earlier decision and in current proceeding under Bill 7 not the same and that matter ought not to be resolved without affording the union an opportunity for a hearing

MUNICIPALITY OF METROPOLITAN TORONTO, THE; RE CUPE, LOCAL 79
..... (July/Aug.)

644

Security Guards - Certification - Practice and Procedure - Representation Vote - Timeliness - USWA and CSU each filing application to displace UPGW as bargaining agent for security guard employees of employer - Board concluding that USWA's first application filed day before commencement of last two months of UPGW collective agreement's operation and, therefore, untimely - USWA filing subsequent application on same day as CSU - Board distinguishing *Carleton Board of Education* case and exercising its discretion under section 111(3) of the Act to process the two applications together - Board finding that USWA and CSU each appearing to enjoy membership support of at least 40% in their proposed bargaining units - Board directing three-way representation vote - Board rejecting request to postpone vote until hearing into various "40% threshold" assertions or allegations concerning conflicts of interest resulting from applicant unions becoming certified - Board explaining its practice concerning how, when and on what information it determines that a representation vote should be ordered in certification applications

BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE USWA; RE UFCW, LOCAL 333 (CANADIAN SECURITY UNION) AND INTERNATIONAL UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1956 (Mar./Apr.)

192

Settlement - Certification - Construction Industry - Employee - Natural Justice - Reconsideration - Representation Vote - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing

B & B ELECTRIC CO. DIVISION OF ELECTROBAUER SYSTEMS LIMITED AND/OR ELECTROBAUER LIMITED; RE IBEW, LOCAL 353 (Nov./Dec.)

907

Settlement - Unfair Labour Practice - Union moving to have employer's application under subsection 96(7) of the Act dismissed for failure to make out *prima facie* case - Employer seeking to enforce representations under subsection 96(7) not reflected in minutes of settlement - Subsection 96(7) not designed to enforce oral representations - Application dismissed

TISDELLE ENTERPRISES LIMITED C.O.B. AS TIM HORTON'S; RE USWA AND JOHN HENSON (Jan.)

40

Strike - Charter of Rights and Freedoms - Constitutional Law - Picketing - Remedies - Toronto Transit Commission ("TTC") alleging that certain protest leaders and labour organizations violating section 83 of the Act by making certain statements and encouraging picketing at TTC sites in effort to ensure that TTC unable to operate during "Days of Protest" against Provincial Government - Respondents arguing that "talking" and "speaking", as opposed to "acts", not falling within ambit of section 83 - Respondents also arguing that section 83 should be read

subject to respondents' Charter rights and that there was no causal connection established between protest leaders statements and unlawful strike that might result - Board dismissing application against labour organizations on grounds that only "persons" may breach section 83 of the Act - Board finding and declaring that two of three named individual respondents violated section 83 of the Act - Individual respondents directed to cease and desist from encouraging persons to picket TTC premises as restricted by the Board - Board prohibiting picketing in and around access points identified by TTC if it will interfere with employees' access to work - Picketing at subway stations also restricted during certain specified hours - Individual respondents directed to advise participants in "Days of Protest" of declarations and directions made by the Board

TORONTO TRANSIT COMMISSION; RE GORD WILSON, SID RYAN, LINDA TORNEY, OFL, CUPE, AND LABOUR COUNCIL OF METROPOLITAN TORONTO; RE MS. MEENU SIKAND-TAYLOR (Sept./Oct.)

889

Strike - Charter of Rights and Freedoms - Constitutional Law - Remedies - General Motors alleging that work stoppage at its London plant in connection with day of protest constituting unlawful strike and seeking declaratory relief as well as cease and desist direction - Union asserting that work stoppage was form of political expression protected by Charter and not "unlawful strike" - Board agreeing that work stoppage was form of "expression" protected by section 2(b) of the Charter, but holding that Labour Relations Act's prohibition on strikes during currency of collective agreement part of balancing embodied in the Act that is within the realm of reasonableness that Courts have accorded to legislatures when addressing labour relations problems - Board finding impugned provisions of the Act not inconsistent with Charter - Board declaring work stoppage at London's GM plant to be unlawful but declining to issue cease and desist direction in respect of future protest strikes

GENERAL MOTORS OF CANADA LIMITED, ("GM" OR "THE COMPANY"); RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA), ET AL (LISTED ON "SCHEDULE A" TO THE APPLICATION) (May/June)

409

Strike - Construction Industry - Local union's business manager writing to certain employers advising them that transfers of employees to job sites after the "shut-down start-time" are prohibited and that employees accepting such transfers will face charges by the union - Board declaring that local union and business manager threatening unlawful strike and issuing cease and desist orders

SARNIA CONSTRUCTION ASSOCIATION AND MECHANICAL CONTRACTORS ASSOCIATION OF SARNIA; RE UA, LOCAL UNION 663 AND ROBERT J. HUMPHREYS (May/June)

488

Strike - Construction Industry - Picketing - Threat to picket employer's worksite constituting threat to call or authorize unlawful strike for purposes of the Act - Ally doctrine not applying to facts before the Board - Declaration and cease and desist order issuing

BLYTHYONGE DEVELOPMENTS INC.; RE LIUNA, LOCAL 183 (May/June)

336

Strike - Employer seeking, but failing to obtain, commitment from union that it will not condone and that members will not engage in work stoppage as result of "Days of Protest" against provincial government - Employer asserting that union and union official threatening to call unlawful strike and that certain employees threatening to engage in unlawful strike in connection with "Days of Protest" - Employer's application dismissed

LIVENT INC.; RE IATSE, LOCAL #58, TORONTO AND JAMES C. FULLER... (Sept./Oct.)

870

Strike - Ratification and Strike Vote - Unfair Labour Practice - Employees alleging that strike/ratification vote organized by OPSEU for 65,000 employees of Government of Ontario employed at 4000 work sites across province not satisfying new statutory requirements - Board

satisfied that voting arrangements made by OPSEU, particularly times and places scheduled for voting, affording employees ample opportunity to cast ballots and reasonably convenient in all the circumstances - Application dismissed

ONTARIO PUBLIC SERVICES EMPLOYEES UNION; RE DAVID E. SMITH ET AL (SEE SCHEDULE "B"); RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY MANAGEMENT BOARD OF CABINET(Mar./Apr.)

297

Strike - Remedies - Board finding that union supporting or encouraging illegal strike in relation to "Days of Protest" against provincial government - Board seeing no reason not to grant both declaratory and directory relief, particularly in view of union's ongoing intention of interfering with production

DE HAVILLAND INC. AND BOMBARDIER REGIONAL AIRCRAFT DIVISION; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL UNIONS 673 AND 112 AND THOSE PERSONS NAMED IN APPENDIX "A"(Nov./Dec.)

938

Termination - Bargaining Unit - Construction Industry - Employee - Grievance - Board ruling that non-ICI collective agreement between employer and Labourers' union not covering work performed in the "yard" on the termination application date - Accordingly, Board determining that no one working in bargaining unit on application date - Termination application dismissed

GAVIGAN CONTRACTING LTD.; RE LIUNA, LOCAL 1059 (May/June)

405

Termination - Certification - Construction Industry - Evidence - Trade Union - Trade Union Status - Unfair Labour Practice - Board dismissing submission that decision in *Canadian Union of Shinglers & Allied Workers* case determinative of issue of employee status of crew leaders in residential roofing industry - *Res judicata* not applying to Board's finding regarding crew leaders in earlier case

DOMINION SHEET METAL & ROOFING WORKS; RE LIUNA, LOCAL 183; RE CANADIAN UNION OF SHINGLERS & ALLIED WORKERS, CJA, LOCAL 27(Sept./Oct.)

795

Termination - Charges - Construction Industry - Employee - Employer Initiation - Intimidation and Coercion - Board rejecting union's argument that newly enacted subsection 63(16) of the Act confirming Board's historical practice of requiring applicant in termination proceedings to establish voluntariness of petition - Board expressing view that hearing under subsection 63(16) should be convened only where allegations of misconduct have been pleaded in such a manner as to establish *prima facie* case of employer initiation or employer threats and coercion - Board considering relevance of rule in *April Waterproofing* case after Bill 7 and concluding that union may still allege in termination application that one or more employees on the application date had been hired contrary to the collective agreement and therefore unable to properly cast a ballot in a representation vote

ELIRPA CONSTRUCTION AND MATERIALS LIMITED; RE KEVIN SMITH AND CLIFFORD WILKINSON; RE IUOE, LOCAL 793(Jan.)

4

Termination - Charges - Employer Initiation - Intimidation and Coercion - Construction Industry - Representation Vote - In response to termination application, union seeking dismissal under subsection 63(16) of the Act and pleading material facts sufficient to establish *prima facie* case of employer initiation or employer threats and intimidation in connection with application - Board directing that representation vote be deferred until determination of allegations raised by union and listing matter for hearing

ONTARIO TRUSS AND WALL, 520601 ONTARIO LTD., O/A; RE IAN CROCKFORD ET AL; RE CJA AND ITS LOCAL 1030(Jan.)

24

Termination - Construction Industry - Evidence - Practice and Procedure - Trade Union - Trade Union Status - Applicants seeking to terminate CUSAW's bargaining rights in connection with several

roofing contractors working in residential sector of construction industry - After close of CUSAW's case, applicant moving to "nonsuit" CUSAW on ground that its own evidence failed to establish that it was a trade union within the meaning of the Act - Board explaining use of nonsuit motions and those akin to nonsuit motions in proceedings before it, and why Board considered applicant's motion without putting it to its election - Board concluding that CUSAW not an organization of employees, but rather an organization formed by, and operated for the benefit of, employers (that is, crew leaders) - Application to terminate bargaining rights allowed

CANADIAN UNION OF SHINGLERS & ALLIED WORKERS; RE JOE WHITE, HANK BROUWERS, PAUL CYR; RE RESIDENTIAL ROOFING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO ET AL..... (Mar./Apr.)

215

Termination - Construction Industry - Fraud - Union certified following failure of employer to respond to application - Employer subsequently seeking to terminate bargaining rights for alleged fraud - Employer alleging that union filed membership evidence on behalf of employees who were not its employees - Employer's application dismissed for failure to make out *prima facie* case

LAW DEVELOPMENT GROUP; CARPENTERS AND ALLIED WORKERS LOCAL 27, CJA (Jan.)

13

Termination - Construction Industry - Interference in Trade Unions - Remedies - Unfair Labour Practice - Prior to directing representation vote, Board inquiring into union's allegation that employer initiated termination application within meaning of section 63(16) of the Act - Board finding involvement of employer in early stage of process leading to termination application - Board holding that termination application founded in employer's initiation should result in its dismissal absent compelling labour relations reasons why vote should still be held - Termination application dismissed under section 63(16) of the Act - Union's unfair labour practice application alleging interference with union's representation of employees allowed - Cease and desist order issuing

BYTOWN ELECTRICAL SERVICES LTD.; RE SHAWN JOSEPH ARSENAULT; RE IBEW AND THE IBEW CONSTRUCTION COUNCIL OF ONTARIO, LOCALS 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, 894, 1687 AND 1739..... (Sept./Oct.)

721

Termination - Duty to Bargain in Good Faith - First Contract Arbitration - Security Guard - Unfair Labour Practice - Board dismissing employer's application under Bill 7 transition provisions to terminate Labourers' union bargaining rights respecting guards - Board finding that no conflict of interest would result from Labourers' union continuing to represent the guards - Board finding that employer breached duty to bargain in good faith by misrepresenting its position respecting contracting out, by arbitrarily reneging on earlier agreements and by sending negotiators without authority to represent an employer position in bargaining - Board granting union's application to direct that first collective agreement be settled by arbitration

OLD OAK PROPERTIES INC. AND EWALD BIERBAUM; RE LIUNA, LOCAL 1059 (July/Aug.)

648

Termination - Employer seeking to terminate union's bargaining rights for failure to bargain - No evidence that union's "sleeping on its rights" - Application dismissed for failure to disclose *prima facie* case

ERIN PARK AUTOMOTIVE LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) (Feb.)

64

Termination - First Contract Arbitration - Practice and Procedure - Application to terminate union's bargaining rights brought after four days of hearing in union's first contract application - Termination applicants asking Board to allow termination application to proceed ahead of first

contract application and asking Board to direct representation vote - Board deciding to proceed with first contract application

FORT WILLIAM CLINIC; RE SHARON COSLETT AND MARNIE MACMILLAN; RE SEU, LOCAL 268 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. AND C.L.C.

.....(Nov./Dec.) 942

Termination - First Contract Arbitration - Practice and Procedure - Union's first contract application pending before Board - Employees subsequently filing termination application - Union's response to termination application including allegations of employer initiation or interference in connection with application - Union seeking dismissal of application under section 63(16) of the Act - Board determining that representation vote ought not to be held at this stage and that first contract application and termination application be listed together for hearing

EAST SIDE MARIO'S, BIRSSA HOLDINGS INC. C.O.B. AS; RE LYNDA ANN FALVO; RE UFCW, LOCAL 175/633(Sept./Oct.)

810

Termination - Intimidation and Coercion - Representation Vote - Group of employees alleging that vocal and active union supporter uttered threats and otherwise intimidated employees in days leading up to representation vote - Union winning vote - Employees requesting new vote - Board satisfied that there were no threats or intimidation and seeing no reason why result of vote should not be considered accurate representation of employees' wishes - Application dismissed

VENEST INDUSTRIES, A DIVISION OF COSMA INTERNATIONAL INC.; RE MAURICE BEAUDOIN AND LARRY SAWATSKY; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CAN-ADA) AND ITS LOCAL 199 CAW(May/June)

499

Termination - Pleadings demonstrating apparent disagreement between applicant, employer and union concerning number of employees in bargaining unit - Board inviting submissions in view of potential effect on outcome of application

ONTARIO PUBLIC SERVICE EMPLOYEES UNION; RE TRACY MCLELLAN, JENNIFER FAULKNER, SHARON HAVILAND, MARY-LOU REEVES, MAXINE RAPAI, DONNA DEMPSEY(Jan.)

20

Termination - Practice and Procedure - Timeliness - Board declining to "waive" rules of procedure providing that termination application considered filed on date that it is received by Board - Board finding termination application untimely in view of appointment of conciliation officer - Application dismissed

ONTARIO PUBLIC SERVICE EMPLOYEES UNION; RE TRACY MCLELLAN, JENNIFER FAULKNER, SHARON HAVILAND, MARY-LOU REEVES, MAXINE RAPAI, DONNA DEMPSEY(Jan.)

23

Termination - Practice and Procedure - Timeliness - Board presented with third termination application regarding same bargaining unit since August 1995 - First application withdrawn and second application dismissed after hearing and Board's conclusion that petition not proven to be voluntary - Board relieving against strict application of Interim Certification and Termination Rules and finding third application sent by registered mail before, but received after, appointment of conciliation officer to be timely - Board, however, exercising its discretion under section 111(2)(k) of the Act to refuse to entertain third application

ONTARIO PUBLIC SERVICES EMPLOYEES UNION; PAULINE STODDART(Feb.)

98

Termination - Reconsideration - Representation Vote - Board earlier ruling disputed ballot in representation vote to be spoiled because it did not unequivocally indicate the voter's choice - Applicant and employer seeking reconsideration on ground that Board denied them opportunity to make submissions on two unreported Board decisions cited by Board in its earlier decision - Applicant

and employer also asserting that Board's decision raising significant and important issues of Board policy, particularly since passage of Bill 7 - Applications for reconsideration dismissed

EDWARDS, A UNIT OF GENERAL SIGNAL; STEPHEN R. GERBER; RE IBEW, LOCAL 353 (July/Aug.) 632

Termination - Representation Vote - Count disclosing 13 ballots in favour of union, 13 ballots against it, and a single segregated ballot - Board determining that segregated ballot cast by eligible voter - Employee who cast segregated ballot advising Board that was prepared to have ballot counted - Board not counting ballot, but directing the taking of another representation vote

BRICK WAREHOUSE CORPORATION, THE; RE TIM WILSON; RE RETAIL WHOLESALE CANADA CANADIAN SERVICE SECTOR, DIVISION OF THE USWA, LOCAL 1000 (Nov./Dec.) 921

Termination - Timeliness - Board finding termination application untimely having regard to agreement of employer and union to continue first contract arbitration under Bill 7's transition provisions - Application dismissed

SEEBURN DIVISION, VENTRA GROUP INC.; RE KIM HARTSELL; RE USWA (May/June) 495

Termination - Timeliness - Union writing to Board subsequent to filing response to termination application and asserting that application untimely in view of appointment of conciliation officer - Board inviting other parties' submissions in view of appearance that application untimely

ONTARIO PUBLIC SERVICE EMPLOYEES UNION; RE TRACY MCLELLAN, JENNIFER FAULKNER, SHARON HAVILAND, MARY-LOU REEVES, MAXINE RAPAI, DONNA DEMPSEY (Jan.) 21

Timeliness - Certification - Construction Industry - Employee - Natural Justice - Reconsideration - Representation Vote - Settlement - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing

B & B ELECTRIC CO. DIVISION OF ELECTROBAUER SYSTEMS LIMITED AND/OR ELECTROBAUER LIMITED; RE IBEW, LOCAL 353 (Nov./Dec.) 907

Timeliness - Certification - Practice and Procedure - Representation Vote - Security Guards - USWA and CSU each filing application to displace UPGW as bargaining agent for security guard employees of employer - Board concluding that USWA's first application filed day before commencement of last two months of UPGW collective agreement's operation and, therefore, untimely - USWA filing subsequent application on same day as CSU - Board distinguishing *Carleton Board of Education* case and exercising its discretion under section 111(3) of the Act to process the two applications together - Board finding that USWA and CSU each appearing to enjoy membership support of at least 40% in their proposed bargaining units - Board directing three-way representation vote - Board rejecting request to postpone vote until hearing

into various “40% threshold” assertions or allegations concerning conflicts of interest resulting from applicant unions becoming certified - Board explaining its practice concerning how, when and on what information it determines that a representation vote should be ordered in certification applications	
BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE USWA; RE UFCW, LOCAL 333 (CANADIAN SECURITY UNION) AND INTERNATIONAL UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1956..... (Mar./Apr.)	192
Timeliness - Practice and Procedure - Termination - Board declining to “waive” rules of procedure providing that termination application considered filed on date that it is received by Board - Board finding termination application untimely in view of appointment of conciliation officer - Application dismissed	
ONTARIO PUBLIC SERVICE EMPLOYEES UNION; RE TRACY MCLELLAN, JENNIFER FAULKINER, SHARON HAVILAND, MARY-LOU REEVES, MAXINE RAPAI, DONNA DEMPSEY (Jan.)	23
Timeliness - Practice and Procedure - Termination - Board presented with third termination application regarding same bargaining unit since August 1995 - First application withdrawn and second application dismissed after hearing and Board’s conclusion that petition not proven to be voluntary - Board relieving against strict application of Interim Certification and Termination Rules and finding third application sent by registered mail before, but received after, appointment of conciliation officer to be timely - Board, however, exercising its discretion under section 111(2)(k) of the Act to refuse to entertain third application	
ONTARIO PUBLIC SERVICES EMPLOYEES UNION; PAULINE STODDART (Feb.)	98
Timeliness - Termination - Board finding termination application untimely having regard to agreement of employer and union to continue first contract arbitration under Bill 7’s transition provisions - Application dismissed	
SEEBURN DIVISION, VENTRA GROUP INC.; RE KIM HARTSELL; RE USWA (May/June)	495
Timeliness - Termination - Union writing to Board subsequent to filing response to termination application and asserting that application untimely in view of appointment of conciliation officer - Board inviting other parties’ submissions in view of appearance that application untimely	
ONTARIO PUBLIC SERVICE EMPLOYEES UNION; RE TRACY MCLELLAN, JENNIFER FAULKINER, SHARON HAVILAND, MARY-LOU REEVES, MAXINE RAPAI, DONNA DEMPSEY (Jan.)	21
Trade Union - Certification - Construction Industry - Evidence - Termination - Trade Union Status - Unfair Labour Practice - Board dismissing submission that decision in <i>Canadian Union of Shinglers & Allied Workers</i> case determinative of issue of employee status of crew leaders in residential roofing industry - <i>Res judicata</i> not applying to Board’s finding regarding crew leaders in earlier case	
DOMINION SHEET METAL & ROOFING WORKS; RE LIUNA, LOCAL 183; RE CANADIAN UNION OF SHINGLERS & ALLIED WORKERS, CJA, LOCAL 27 (Sept./Oct.)	795
Trade Union - Certification - Evidence - Judicial Review - Trade Union Status - Steelworkers’ union applying for certification at workplace with employees’ association - Union arguing that association not a “trade union” within meaning of the Act and that Board should certify Steelworkers’ without representation vote - Employees’ association having twenty-year history of negotiating agreements with employer setting out terms and conditions of employment, but association having no constitution and no members - Board finding that association not a trade union - Certificate issuing - Employer applying for judicial review and alleging that Board’s	

decision patently unreasonable and based on findings of fact for which there was no evidence - Application for judicial review dismissed by Divisional Court

KUBOTA METAL CORPORATION FAHRAMET DIVISION; RE USWA AND ONTARIO LABOUR RELATIONS BOARD (May/June) 504

Trade Union - Certification - Representation Vote - Trade Union Status - Employer asserting that employees affected by certification application already represented by employees' association, that employees' association a trade union within meaning of the Act, and that employer and employees' association parties to a collective agreement within meaning of the Act - Certification application timely even assuming that employer's assertions correct - Board directing representation vote in which employees asked to cast two ballots - First ballot to ask voters whether they wish to be represented by applicant union - Second ballot to ask voters whether they wish to be represented by applicant union or employees' association - Issue of status of employees' association to be determined at hearing following the vote

CANARM LTD.; RE USWA; RE CANARM EMPLOYEES ASSOCIATION (Sept./Oct.) 747

Trade Union - Construction Industry - Evidence - Practice and Procedure - Termination - Trade Union Status - Applicants seeking to terminate CUSAW's bargaining rights in connection with several roofing contractors working in residential sector of construction industry - After close of CUSAW's case, applicant moving to "nonsuit" CUSAW on ground that its own evidence failed to establish that it was a trade union within the meaning of the Act - Board explaining use of nonsuit motions and those akin to nonsuit motions in proceedings before it, and why Board considered applicant's motion without putting it to its election - Board concluding that CUSAW not an organization of employees, but rather an organization formed by, and operated for the benefit of, employers (that is, crew leaders) - Application to terminate bargaining rights allowed

CANADIAN UNION OF SHINGLERS & ALLIED WORKERS; RE JOE WHITE, HANK BROUWERS, PAUL CYR; RE RESIDENTIAL ROOFING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO ET AL (Mar./Apr.) 215

Trade Union Status - Certification - Construction Industry - Evidence - Termination - Trade Union - Unfair Labour Practice - Board dismissing submission that decision in *Canadian Union of Shinglers & Allied Workers* case determinative of issue of employee status of crew leaders in residential roofing industry - *Res judicata* not applying to Board's finding regarding crew leaders in earlier case

DOMINION SHEET METAL & ROOFING WORKS; RE LIUNA, LOCAL 183; RE CANADIAN UNION OF SHINGLERS & ALLIED WORKERS, CJA, LOCAL 27 (Sept./Oct.) 795

Trade Union Status - Certification - Evidence - Judicial Review - Trade Union - Steelworkers' union applying for certification at workplace with employees' association - Union arguing that association not a "trade union" within meaning of the Act and that Board should certify Steelworkers' without representation vote - Employees' association having twenty-year history of negotiating agreements with employer setting out terms and conditions of employment, but association having no constitution and no members - Board finding that association not a trade union - Certificate issuing - Employer applying for judicial review and alleging that Board's decision patently unreasonable and based on findings of fact for which there was no evidence - Application for judicial review dismissed by Divisional Court

KUBOTA METAL CORPORATION FAHRAMET DIVISION; RE USWA AND ONTARIO LABOUR RELATIONS BOARD (May/June) 504

Trade Union Status - Certification - Representation Vote - Trade Union - Employer asserting that employees affected by certification application already represented by employees' association, that employees' association a trade union within meaning of the Act, and that employer and employees' association parties to a collective agreement within meaning of the Act - Certification application timely even assuming that employer's assertions correct - Board directing

representation vote in which employees asked to cast two ballots - First ballot to ask voters whether they wish to be represented by applicant union - Second ballot to ask voters whether they wish to be represented by applicant union or employees' association - Issue of status of employees' association to be determined at hearing following the vote	
CANARM LTD.; RE USWA; RE CANARM EMPLOYEES ASSOCIATION	(Sept./Oct.) 747
Trade Union Status - Construction Industry - Evidence - Practice and Procedure - Termination - Trade Union - Applicants seeking to terminate CUSAW's bargaining rights in connection with several roofing contractors working in residential sector of construction industry - After close of CUSAW's case, applicant moving to "nonsuit" CUSAW on ground that its own evidence failed to establish that it was a trade union within the meaning of the Act - Board explaining use of nonsuit motions and those akin to nonsuit motions in proceedings before it, and why Board considered applicant's motion without putting it to its election - Board concluding that CUSAW not an organization of employees, but rather an organization formed by, and operated for the benefit of, employers (that is, crew leaders) - Application to terminate bargaining rights allowed	
CANADIAN UNION OF SHINGLERS & ALLIED WORKERS; RE JOE WHITE, HANK BROUWERS, PAUL CYR; RE RESIDENTIAL ROOFING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO ET AL	(Mar./Apr.) 215
Trusteeship - Interim Relief - Remedies - International union seeking to extend trusteeship over local beyond 12 month period - Application to extend trusteeship filed 12 days before statutory expiry of trusteeship - International union asking to extend trusteeship on interim basis pending disposition of main request - Request for interim extension of trusteeship dismissed - International directed to forward notices and copies of Board's decision to all members of local	
IBEW; RE IBEW, LOCAL 1788	(Mar./Apr.) 244
Unfair Labour Practice - Adjournment - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Practice and Procedure - Remedies - Board not satisfied that medical evidence justifying employer's inability to attend at Board hearing - Adjournment request denied - Board finding employer's threats to close business and subsequent layoff of employees in violation of the Act - Union certified under section 11(1) of the Act	
BALKAN GLASS & ALUMINUM INC.; RE PAT, LOCAL UNION 1819 (GLAZIERS)	(Sept./Oct.) 717
Unfair Labour Practice - Alteration of Jurisdiction - Construction Industry - Parties - Practice and Procedure - IBEW Local ("Local 1788") alleging that IBEW (the "International") altering its jurisdiction without just cause contrary to Bill 80 amendments to the Act - Board granting standing to IBEW Electrical Power Systems Construction Council of Ontario, various locals of IBEW, EPSCA, and Ontario Hydro and denying standing to IBEW Construction Council of Ontario and to Electrical Contractors Association of Ontario - Board directing applicant Local 1788 to call its evidence first - On the merits, Board determining that International had altered Local 1788's jurisdiction as alleged, but that it had just cause to do so - Board satisfied that alteration of jurisdiction likely to facilitate viable and stable collective bargaining without causing serious labour relations problems - Application dismissed	
IBEW; RE IBEW LOCAL 1788; RE THE IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO AND IBEW, LOCAL UNIONS 105, 115, 120, 303, 402, 530, 586, 773, 804, 894, 1687 AND 1739; EPSCA AND ONTARIO HYDRO; IBEW, LOCAL 353	(Feb.) 70
Unfair Labour Practice - Certification - Certification Where Act Contravened - Interference in Trade Unions - Intimidation and Coercion - Reconsideration - Board finding that employer removal of key inside union organizer from workplace and subsequent reassignment tainted by anti-union animus - Board also finding that various steps to increase managerial presence in workplace during organizing campaign coloured by anti-union motivation - Board certifying	

union under section 9.2 of "old" Labour Relations Act - Employer seeking reconsideration of decision on grounds that "bottom line" decision (without reasons) issued on November 10, 1995 was not "final" decision for purposes of transitional provisions of Bill 7 - Employer submitting that Board ought to have decided case under section 11(1) of "new" Labour Relations Act - Board noting that absence of reasons not undermining dispositive effect of "bottom line" decision and that Bill 7 requiring that "new" Act apply retroactively only where no final decision having issued on November 10, 1995 - Reconsideration application dismissed

SHOPPERS DRUG MART, ASM DISPENSARIES LIMITED C.O.B. AS; RE USWA; RE GROUP OF EMPLOYEES (Mar./Apr.)

303

Unfair Labour Practice - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Interference in Trade Unions - Intimidation and Coercion - Certification application filed under old Labour Relations Act caught by transition provisions of Bill 7 and determined under new Labour Relations Act, 1995 - Board finding that employer violating the Act in discharging union supporter and in circulating questionnaire inquiring about employees' union membership - Board directing that discharged employee be compensated for lost earnings - Board also certifying union under section 11 of the Act

CULLITON BROTHERS LIMITED; RE IBEW, LOCAL 804; RE GROUP OF EMPLOYEES..... (July/Aug.)

593

Unfair Labour Practice - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Interference in Trade Unions - Board finding that employer violated the Act in promoting an employee association in the face of the union organizing campaign and in indefinitely suspending the lead inside union organizer - Board certifying union under section 11(1) of the Act

BURLINGTON GOLF & COUNTRY CLUB LIMITED; RE CANADIAN UNION OF OPERATING ENGINEERS AND GENERAL WORKERS (July/Aug.)

505

Unfair Labour Practice - Certification - Certification Where Act Contravened - Interference in Trade Unions - Intimidation and Coercion - Remedies - After receiving copy of union's certification application, employer meeting with employees one-to-one and asking them to sign personalized declaration opposing trade union - Employer acting on legal advice and in belief that he was acting in compliance with Board's rules - Only one of five employees subsequently casting ballot in representation vote - Union losing vote - Board setting aside representation vote and directing new vote - Employer directed to cease and desist violating Act, to post decision and attached notice in workplace and to mail copy to each employee at home, and to provide union opportunity to address employees at meeting held during normal working hours - Union's application to be certified under section 11(1) of the Act dismissed

MAVERICK MECHANICAL CONTRACTORS LIMITED; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION..... (Mar./Apr.)

289

Unfair Labour Practice - Certification - Change in Working Conditions Evidence - Construction Industry - Evidence - Intimidation and Coercion - Practice and Procedure - Representation Vote - Witness - After conducting inquiry into witness's alleged prior inconsistent statement, Board declining to declare witness hostile or adverse - Board concluding that union used charges and threat of charges under its constitution to intimidate employees into supporting certification application - Certification application dismissed under section 11(2) of the Act - Board finding that employer violated statutory freeze when it changed wage rate it had agreed to pay to two employees - Compensation ordered

CENTRO MECHANICAL INC.; RE UA, AND ITS LOCAL 221 (Sept./Oct.)

762

Unfair Labour Practice - Certification - Construction Industry - Employer Support - CLAC seeking to displace Sheet Metal Workers' union as employees' bargaining agent - Board concluding

that employer's support of CLAC clear and significant and qualifying as "other support" within meaning of section 15 of the Act - CLAC's application for certification dismissed

COVERTITE EASTERN LIMITED; RE CLAC, LOCAL 52; RE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 47 (May/June)

386

Unfair Labour Practice - Certification - Construction Industry - Evidence - Termination - Trade Union - Trade Union Status - Board dismissing submission that decision in *Canadian Union of Shinglers & Allied Workers* case determinative of issue of employee status of crew leaders in residential roofing industry - *Res judicata* not applying to Board's finding regarding crew leaders in earlier case

DOMINION SHEET METAL & ROOFING WORKS; RE LIUNA, LOCAL 183; RE CANADIAN UNION OF SHINGLERS & ALLIED WORKERS, CJA, LOCAL 27 (Sept./Oct.)

795

Unfair Labour Practice - Collective Agreement - Duty to Bargain in Good Faith - Remedies - Union alleging violation of duty to bargain in good faith where employer deciding not to ratify what had been negotiated between its collective bargaining representatives and those of union - Board rejecting union's argument that collective agreement had, as matter of fact, been concluded between parties - Board, however, deciding that employer's failure to develop adequate bargaining mandate falling short of obligation to make every reasonable effort to conclude collective agreement - Employer directed to develop unconditional proposal for collective agreement and return to table and bargain with union in good faith

CORPORATION LE LYCÉE CLAUDEL; RE SYNDICAT CANADIEN DE LA FONCTION PUBLIQUE ET SA SECTION LOCALE 2519 (May/June)

370

Unfair Labour Practice - Colleges Collective Bargaining Act - Discharge - Duty of Fair Representation - Health and Safety - Practice and Procedure - Applicant complaining about union's handling of various grievances and about conduct of College alleged to have caused stress and to constitute workplace hazard- Board exercising its discretion not to inquire into complaint under Colleges Collective Bargaining Act because of delay and because no labour relations purpose would be served by the inquiry - Application under Occupational Health and Safety Act (OHSA), except for issue of separation from employment, dismissed for delay - Application under OHSA dealing with termination stayed by Board pending outcome of complaints filed by applicant with Human Rights Commission

GAZIT, DAVID; RE OPSEU; RE GEORGE BROWN COLLEGE (July/Aug.)

635

Unfair Labour Practice - Construction Industry - Duty to Bargain in Good Faith - Board deciding that unions breaching duty to bargain in good faith by pressing to impasse demand that employers represented by the Masonry Contractors Ontario, Greater Toronto Area ("MCO") include provision in collective agreements requiring them to make industry fund payments to rival Masonry Contractors Association of Toronto ("MCAT")

MASONRY CONTRACTORS ONTARIO, GREATER TORONTO AREA ON ITS OWN BEHALF AND ON BEHALF OF ITS MEMBERS (MCO) AND THE INDIVIDUAL EMPLOYERS WHOSE NAMES ARE SET OUT ON SCHEDULE B ATTACHED HERETO, THE; RE LIUNA, LOCAL 183 AND BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA, LOCAL 1 AND THE MASONRY COUNCIL OF UNIONS TORONTO & VICINITY; RE MASONRY CONTRACTORS ASSOCIATION OF TORONTO ("MCAT") (Nov./Dec.)

951

Unfair Labour Practice - Construction Industry - Interference in Trade Unions - Remedies - Termination - Prior to directing representation vote, Board inquiring into union's allegation that employer initiated termination application within meaning of section 63(16) of the Act - Board finding involvement of employer in early stage of process leading to termination application - Board holding that termination application founded in employer's initiation should result in its dismissal absent compelling labour relations reasons why vote should still be held - Termination

application dismissed under section 63(16) of the Act - Union's unfair labour practice application alleging interference with union's representation of employees allowed - Cease and desist order issuing

BYTOWN ELECTRICAL SERVICES LTD.; RE SHAWN JOSEPH ARSENAULT; RE IBEW AND THE IBEW CONSTRUCTION COUNCIL OF ONTARIO, LOCALS 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, 894, 1687 AND 1739.....(Sept./Oct.) 721

Unfair Labour Practice - Construction Industry - Interim Relief - Remedies - Applicants alleging that International union, through trusteeship has made unlawful use of local union's assets, has improperly imposed dues increase on members and has conducted itself improperly in negotiating new collective agreements to detriment of members of local union - Applicants seeking interim order staying implementation of new collective agreements - Board concluding that it is without jurisdiction under section 98 of the Act to grant the interim order sought, but that Statutory Powers Procedure Act confers jurisdiction on Board to provide substantive interim relief, including the order sought - Board dismissing application for interim relief because of applicants' undue delay

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, KEN WOODS, ALLAN DIGGON, TOM MCGREEVY AND IBEW, LOCAL UNION 1788 BY ITS TRUSTEE, IBEW AND ONTARIO HYDRO AND EPSCA; RE POWER WORKERS' UNION - CUPE, LOCAL 1000 AND J. CASKANETTE, G.D. CHAFFEY, M.D. COLLINS, L. CRAUSEN, H.R. GILLIES, R.C. HANSEN, G. O'DONNELL, J. STARK, R. THOMS, H. TOMSETT, AND R.R. YOUNG ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF IBEW, LOCAL UNION 1788(Sept./Oct.) 826

Unfair Labour Practice - Contempt - Natural Justice - Practice and Procedure - Union asking Board to state case for contempt against Chair of Management Board as result of press accounts of certain comments attributed to him regarding Labour Relations Board - Union also alleging that Board lacking requisite structural independence and reasonably perceived to be partial as result of government's recent removal of vice-chairs prior to expiry of terms of appointment, government's role in selection of the vice-chairs removed, recent re-appointment "at pleasure" of two vice-chairs, certain comments attributed to Chair of Management Board, and allegations regarding control of Chair of Management Board over Ministry of Labour's list of approved arbitrators - Vice-Chair presiding at hearing disclosing that he and all other vice-chairs possess information concerning process of selection of vice-chairs for removal, but declining to reveal content of that information - Board accepting respondents' submission that disclosure raising reasonable apprehension of bias - Board staying proceedings

ONTARIO REALTY CORPORATION (ORC), DAVID JOHNSON, FRANK RAPOSO AND SIGNATURE BUILDING MAINTENANCE SYSTEMS; SEIU, LOCAL 204.....(Nov./Dec.) 998

Unfair Labour Practice - Duty of Fair Representation - Applicants asserting that union breached its duty of fair representation by processing their outstanding classification grievances in expedited "mediation-arbitration" system devised to dispose of significant backlog of such cases - Applicants also alleging that both union and employer committed series of unfair labour practices by agreeing to and carrying out expedited process - Applications dismissed

MCLAUGHLIN, WM. J.; RE OPSEU AND THE CROWN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MANAGEMENT BOARD OF CABINET(May/June) 469

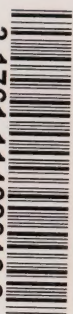
Unfair Labour Practice - Duty of Fair Representation - Practice and Procedure - Applicant claiming that faculty union violated duty of fair representation when it refused to take his grievance to arbitration - Union's non-suit motion allowed - Application dismissed

WINTER, JAMES DR.; RE THE FACULTY ASSOCIATION OF THE UNIVERSITY OF WINDSOR; RE THE UNIVERSITY OF WINDSOR(Feb.) 154

Unfair Labour Practice - Duty to Bargain in Good Faith - First Contract Arbitration - Security Guard - Termination - Board dismissing employer's application under Bill 7 transition provisions to terminate Labourers' union bargaining rights respecting guards - Board finding that no conflict of interest would result from Labourers' union continuing to represent the guards - Board finding that employer breached duty to bargain in good faith by misrepresenting its position respecting contracting out, by arbitrarily reneging on earlier agreements and by sending negotiators without authority to represent an employer position in bargaining - Board granting union's application to direct that first collective agreement be settled by arbitration	
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ROBERTSON-YATES CORPORATION LIMITED AND THE OLRB; RE IBEW, LOCAL 105, PAT, LOCALS 205 AND 1824, UA, LOCAL 67.....	(Jan.) 55

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